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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 90

CARLOTA BENITEZ SAMPAYO,

Petitioner,

vs.

THE BANK OF NOVA SCOTIA.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

BRIEF FOR PETITIONER.

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Official Opinions in the Case.

The first reported opinion is that of the United States Circuit Court of Appeals for the First Circuit, and is reported in 109 F. (2d) 743.

The opinion rendered on February 21, 1940, upon petition for rehearing, appears at pages 750 and 751 of the same volume. (109 F. (2d) 750.)

There is no other reported opinion.

Statement of Basis of Jurisdiction.

The jurisdiction of this Court has been invoked on the basis of the following statutory provisions:

(a) Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, which Section is also known as U. S. C. Title 28, Section 347 (a).

(b) Section 75 (n) of the Bankruptcy Act of July 1, 1898 (as amended) also known as U. S. C. Title 11, Section 203 (n), as amended by the Act of August 28, 1935, currently cited as the Frazier-Lemke Act.

(c) Section 24 (c) of the Bankruptcy Act, also known as U. S. C. Title 11, Section 47 (c), as amended by the Act of June 22, 1938, currently cited as the Chandler Act.

Preliminary Statement.

This cause comes before this Court on petition for writ of certiorari filed on May 21, 1940 and granted by this Court on Monday, October 14, 1940, to review a final decision and decree of the United States Circuit Court of Appeals for the First Circuit (R., p. 53). Said decree affirmed a Decree of Dismissal rendered by the District Court of the United States for Puerto Rico (Cooper, J.) whereby your petitioner's farmer-debtor proceedings under Section 75 of the Bankruptcy Act were dismissed with costs. (R., p. 25.)

On or about November 1, 1940 counsel for the petitioner filed a petition herein entitled "PETITION FOR INSTRUCTIONS AND FOR CERTAIN AUTHORITY." Through said petition it was aimed to have the entire question as to whether your petitioner qualified or not as a "farmer", pursuant to the provisions of Section 75 of the Bankruptcy Act, reviewed by this Court. The undersigned counsel was informed by the Clerk of this Court

through letter dated November 14, 1940, that although no formal order was entered in the matter, this Court had authorized him to advise us that the only question upon which this case should be briefed and argued before this Court is that as to whether in a proceeding under said Section 75 of the Bankruptcy Act the definition of the term "farmer" is to be determined by Section 75 (r) of the Act of July 1, 1898, as amended, or by that of Chapter I, Section 1 (17) of the Chandler Act. (52 Stat. 840.)

Statement of the Case.

The undersigned counsel would have desired to go into the entire question as to whether petitioner qualified or not as a "farmer" under Section 75, or, at least, into some of the other salient issues passed upon and decided by the United States Circuit Court of Appeals for the First Circuit, and to present to this Court a complete statement of the facts of the case. Nevertheless, in view of the instructions hereinbefore mentioned, we must abstain from furnishing such detailed statement, since, under those circumstances, we may not go further in that respect than to refer to the sole question to which review has been limited by this Court.

The pertinent portion of the Chandler Act, including a certain definition of "farmer" which the Circuit Court of Appeals below has held to apply in proceedings under Section 75, since the effective date of the said Chandler Act, reads as follows:

"Chapter I—Definitions

Section 1. Meaning of Words and Phrases.—The words and phrases used in this Act and in proceedings pursuant hereto shall, unless the same be inconsistent with the context, be construed as follows:

* * * * * * *

(17) "Farmer" shall mean an individual personally engaged in farming or tillage of the soil, and shall include an individual personally engaged in dairy farming or in the production of poultry, livestock, or poultry or livestock products in their unmanufactured state, **IF** the principal part of his income is derived from any one or more of such operations;" (Emphasis Supplied.) From the Act of June 22, 1938.

The definition of "Farmer" which we believe has always applied in proceedings under Section 75 of the Bankruptcy Act, since the amendment of May 15, 1935, and until the amendment of March 4, 1940 (Public Law No. 423, 76th Congress) which eliminated the obsolete reference to Section 74, is as follows:

"(r) For the purposes of this section, section 4 (b), and section 74, the term 'farmer' includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, **OR** the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such operations occur." (Emphasis supplied.)

Introduction.

This case is noteworthy in that it involves much more than the rights and interests of an individual. The answer to the question as to the applicable definition of "farmer" in proceedings under Section 75 of the Bankruptcy Act, fundamentally affects a substantial portion of that all-important class for the relief of which Congress promulgated and has repeatedly amended the special emergency legisla-

tion involved, with a view of promoting economic balance, thus preserving the financial and economic structure of the Nation as a whole. We refer to "Provisions for the Relief of Debtors" initiated by Chapter VIII of the Bankruptcy Act of March 3, 1933, as amended.

As stated by this Court in *Kalb* v. *Feuerstein*, 308 U. S. 433, at p. 443, Congress set up in the Frazier-Lemke Act an exclusive and easily accessible statutory means for rehabilitating distressed farmers who, as victims of a general economic depression, were without means to engage in formal litigation. In our humble opinion, such worthy purpose may not become an accomplished fact, until such decisions as have been recently rendered by this Court, construing the special and even extraordinary provisions of Section 75, be supplemented by a decision that shall remove present uncertainty as to the applicable definition of "farmer" in proceedings under that Section.

To us it seems rather clear that the problems of to-day cannot be solved through the application of previous theories or concepts. If such be the case, and in view of the liberal spirit pervading even as to strict bankruptcy proceedings in favor of the bankrupt, it would seem that the Frazier-Lemke Act, which we respectfully submit, **is completely integrated**, should be construed in favor of the farming industry of the country, in order to promote an adequate reflection of the existing liberal legislative intent in that respect. If the Circuit Court of Appeals was correct in its decision, it would be then necessary to arrive at the conclusion that such liberalizing policy of Congress had come to an end.

In the Beach case (First National Bank vs. Beach, 301 U. S. 435), decided prior to the effective date of the Chandler Act, this Court definitely held that the two branches of the definition of "farmer," in Section 75 (r) were not equivalents but, on the contrary, were used by way of con-

trast. That occasions might arise where a person might properly qualify as a farmer under either of the said two branches of the definition which, it was repeatedly stated, were not terms of art. Still, were the definition of "farmer" in Chapter I, Section 1 (17) of the Chandler Act, of June 22, 1938, to apply in proceedings under Section 75, it would inevitably follow that for a person to qualify as a "farmer" it would be necessary to qualify simultaneously under both branches of the definition.

A person engaged in the production of raw food or other material by natural processes of growth, we respectfully submit, does not cease to be a farmer because drought, pest or depressed conditions may force him to temporarily produce at a loss. Nor does it seem possible that Congress could have gone into the elaborate procedure of providing and amending a Farm Debt Moratorium Act, endowed with so many special provisions, exclusively for the benefit of relatively prosperous farmers whose principal income is derived from farming operations.

The Senate Committee on the Judiciary in its Report, No. 985, 74th Congress, 1st Session, p. 5, explaining a certain amendment to Section 75 subsequently approved on August 28, 1935, stated: "A bankrupt is a financial wreck. The question of interest **and profits** in bankruptcy proceedings, is never considered." (Emphasis supplied) It would, therefore, seem obvious that Congress through the enactment and repeated amendment of the particular emergency leg slation involved, instead of having in mind the relatively prosperous "farmer" who received the principal part of his income from farming operations, rather aimed to reach that class which, due to the depression cycle, found itself in the throes of despair, irrespective of the fact as to whether there was or there was not any principal income, or, for that matter, any income at all. As was said by this Court in *First National Bank* v. *Beach,* 301 U. S. 435, at

p. 439, "The scantiness of the yield may have turned him into a bankrupt, but it did not change his occupation."

We respectfully submit that this special emergency legislation is, in its broader aspects, aimed at providing the means whereby all those involved in the production of agricultural commodities could weather hard times, either through composition or extension of time to pay their debts and, upon their inability or failure to obtain such relief, through a conditional three-year moratorium. That such was the legislative intent and that it was by no means the intention of Congress to limit the relief provided through said special emergency legislation to the man who walks behind a plow, or operates a farm through the hiring of the necessary help but who, in either case also derives the principal part of his income from farming operations, appears in bold relief from a careful investigation of the history of the particular legislation, as well as from the decisions thus far rendered by this Court and various appellate courts, interpreting said legislation.

To the foregoing it seems in order to add that Section 75 is usually referred to as "The Frazier-Lemke Farm Debt Moratorium Act," or the "Farm Mortgage Moratorium." In fact, it was under that latter title that all the hearings had before the Special Subcommittee on Bankruptcy of the Committee on the Judiciary, (75th Congress, 2d and 3rd sessions on S. 2215 and H. R. 6452) from December 1937 to January 1938, were reported.

In the opinion delivered in the Beach Case, 301 U. S. 435, at p. 438, by Mr. Justice Cardozo, that eminent jurist said: "Occasions must have been in view when the receipt of income from farming operations would make a farmer out of someone who personally or primarily was engaged in different activities."

Reference to Section 75 itself, as it stood before and after the passage of the Chandler Act, and as it now stands,

we respectfully submit, also sustains our viewpoint in that respect. As pointed out by the Circuit Court below in its opinion, Section 75 (s) (4) makes the provisions of the Frazier-Lemke Act applicable also to partnership, common, entirety, joint community ownerships, or to farming corporations where at least 75 per centum of the stock is owned by actual farmers. It is not at all difficult to visualize that in the case of any of the first four business organizations mentioned, one or more of the partners, co-tenants or co-owners, thus entitled to receive the benefits of the Act might not be farmers. Occasions may even arise when one or more of said partners, co-tenants or co-owners may have never been on a farm. Still, the Act would cover such absentee or non-cooperating partners, co-tenants or co-owners to the same extent as though they were personally engaged in farming operations or tillage of the soil. In the case of a farming corporation, that, we respectfully submit, must not be necessarily managed by a farmer, even those stockholders who are not farmers (to the extent of 25 per centum thereof) may also obtain the relief provided by the Frazier-Lemke Act.

We further respectfully submit that although such other remedial legislation as the Agricultural Adjustment Act (48 Stat. at L. 31, U. S. C. A., title 7, Sect. 601, and the Bankhead Act (48 Stat. at L. 958, chapter 687, U. S. C. A., title 7, Sect. 725) was intended to provide relief exclusively for the "**farmer-producer**", in the form of benefit payments, etc. (*United States* v. *Butler*, 297 U. S. 1 and *Butler* v. *United States*, C. C. A. **FIRST**, 78 F. (2d) 1, at page 12). Section 75 of the Bankruptcy Act was, on the other hand, intended to cover a much broader field by providing the necessary emergency relief to that entire class referred to in present times as "**farmer-debtors**", which class is none other than those combined forces of the Nation usually referred to as the agricultural debtors. (*Paradise Land &*

Livestock Co. v. *Federal Land Bank of Berkeley, Cal.*, (C. C. A. 10, 1939) 108 F. (2d) 832).

That the traditional concept of farmer was intentionally eliminated by Congress through the promulgation and amendment of the definition of "farmer" of Section 75 (r), has been repeatedly held by the courts. The latest reported case that we know of, expressly sustaining that theory, is that of *In re Horner* (C. C. A., 7th, 1939) 104 F. (2d) 600, 601, which case is likewise an authority in favor of the theory which this brief aims to sustain.

In our humble opinion, the accepted concept of "farmer" since March, 1933 when Section 75 was enacted, and up to this date, was admirably expressed in the opinion rendered by the Circuit Court of Appeals for the Second Circuit in the Beach case reported in 86 F. (2d) 88. We extract the following from the Opinion rendered in that case:

> "* * * But section 75(r), as amended (11 U. S. C. A., Sect. 203 (r), **certainly meant to broaden the class, by contrasting those 'personally bona fide engaged' in husbandry with those who merely drew their principal income from it.** It seems to us either that 'personally' must mean 'without any assistants', or that the second clause includes those who live by rents from the farm operations of tenants. We reject the first alternative; a man is no less a farmer because he hires laborers, either regularly or sporadically; he is 'personally' engaged in farming, though, being in possession, he rides his acres and superintends the manual labors of others. On the other hand it is certainly a great abuse of words to call that man a farmer, who merely lives upon the yield of farm lands; nor can we see that this is much bettered by confining the clause to leases in which the tenant pays in kind. Nevertheless, notwithstanding the violence done to ordinary usage, we cannot escape the literal meaning of the words chosen. Such a result does not, moreover, violate the probabilities as much as one might at first blush suppose. The occasion for the legisla-

> tion was the collapse of farm values, following upon the depression, and indeed preceding it. There was a large class who had rented their farms to others, but who were as dependent upon the yield as though they worked the land themselves as they usually had done originally. These people were ordinarily in the same case as those who actually farmed; it is not unreasonable to ascribe to Congress an intention to succor them with the rest. * * * **But when the debtor's principal income in fact comes out of the land, we find it impossible to give reasonable effect to the language used, unless we call him a farmer.**" (Emphasis supplied.)

The foregoing is not intended to cover any other issue in the present case. We have rather aimed to approach the situation from its general fundamental aspects. The people of this island of Puerto Rico are, perhaps, more vitally concerned with the general welfare of agriculture than any particular community in continental United States. Consequently, those who like ourselves must repeatedly come in contact with the acute conditions prevailing through the subsisting depression in farm values and in the agricultural industry as a whole, must necessarily have a genuine interest in maintaining the integrity of Section 75, as we understand it to be, until the emergency shall have come to an end.

Preliminary Considerations.

I.

The Issue Pertaining to the Applicable Definition of "Farmer" Was Injected into the Proceedings Below by Respondent.

The following statement has been extracted from page six of the brief in opposition to the petition for certiorari filed by Respondent herein:

"* * * **Although the question was not raised by the parties,** the Circuit Court, as a preliminary matter, held that the Chandler Act had amended Section 75 (r) of the Bankruptcy Act and that consequently the applicable definition of 'farmer' was that one given in Section 1 (17) of the Bankruptcy Act as revised by the Chandler Act." (Emphasis supplied.)

It is quite apparent that in advancing that statement, counsel for the Respondent overlooked the following which appears under Point III, entitled "Appellant is not a farmer as defined in Section 75 of the Bankruptcy Act", on page 32 of the brief for appellee filed in case No. 3487 before the Circuit Court of Appeals:

"This sub-section (r) was enacted in 1935 by the amendatory Act which we have discussed in Point II (b) hereinabove. (Act of August 28, 1935, c. 792, 14 Stat. 943.) Since that time Congress has passed the Amendatory Act of June 22, 1938 known as the Chandler Act (52 Stat. 840), effective by its terms September 22, 1938.

"The said Chandler Act added a new sub-section (17) to Section 1 of the Act (11 U. S. C. A. 1 (17)) which provides that, unless inconsistent with the context, the term:

"'"Farmer" shall mean (1) an individual personally engaged in farming or tillage of the soil and (2) shall include an individual personally engaged in doing farming or in the production of poultry, livestock, or poultry or livestock products, in their unmanufactured state, if the principal part of his income is derived from any one or more of such operations.'" (Emphasis supplied.)

Again on page 33 of the same brief, under the same point and heading, the following appears:

"We submit that the test to determine who is a 'farmer' under the Act may be stated as follows:

"1. Is the debtor primarily bona fide personally engaged in the farming operations? Or

"2. Is the debtor **personally engaged** in any farming operations from which he derives the principal part of his income?" (Emphasis supplied.)

To the foregoing we might add that we do not agree with certain other statements or innuendoes incorporated in said Brief in Opposition. However, the issue having been limited by this Court to the question of the applicable definition of "farmer", we have not deemed it necessary to go into those other details. On the other hand, the clarification of the situation referred to above being altogether important, we have felt in duty bound to bring such situation before this Court in its true light. It is just because the task is one of the many disagreeable ones imposed by the profession, that we have disposed of it at the outset.

II.

THE DISTRICT COURT APPARENTLY ALSO DECIDED THE ISSUE AS TO WHETHER PETITIONER HEREIN QUALIFIED OR NOT AS A "FARMER" UNDER THE ASSUMPTION THAT IT WAS THE DEFINITION OF "FARMER" IN SECTION 1 (17) OF THE CHANDLER ACT AND NOT THE DEFINITION OF SECTION 75 (r) THAT APPLIED IN PROCEEDINGS UNDER SECTION 75, AFTER THE EFFECTIVE DATE OF THE CHANDLER ACT.

The pertinent docket entry shows that upon the termination of the final hearing had before the District Court on December 27, 1938 (the District) "Court announced that order dismissing case would be signed on ground that debtor was not a farmer." (R., p. 27.)

Reference to the Findings of Fact and Conclusions of Law (R., p. 20) made pursuant to the Decree of Dismissal made and entered on January 3, 1939, further shows that after dealing with various other questions the District Court held

that "This Court as a Bankruptcy Court is without jurisdiction to entertain the debtor's petition filed herein." (R., p 25, Conclusion IV.)

It seems worthy of note that in interpreting the conclusion of law just cited, the Circuit Court of Appeals relates it to that part of its opinion in which the Circuit Court holds that assuming that petitioner herein qualified as a "farmer" because of her poultry business, she having "received $20,000.00 as her share of benefit payments (paid) by the Department of Agriculture" (R., p. 65), she did not establish, nor did she make any effort to establish "that the principal part of her income was derived from the production of poultry." To that the Circuit Court added: "hence the District Court was not in error in its ultimate conclusion that 'This Court as a Bankruptcy Court is without jurisdiction to entertain the debtor's petition filed herein.'" (R., p. 65.)

Perhaps the best way to definitely establish our contention to the effect that the District Court apparently based its decision as to whether petitioner herein was or was not a "farmer" on the assumption that it was the definition of "farmer" of Section 1 (17) of the Chandler Act and not the definition of Section 75 (r) that applied, will be to cite some of the statements made by the Hon. Robert A. Cooper, Judge of the District Court, in the course of the final hearing, together with such other statements as are necessary to show the exact import. We shall therefore, proceed to extract and transcribe hereinbelow such statements, taken from the Court Reporter's Transcript of the evidence produced and proceedings had at the time of the final hearing on December 27, 1938, which resulted in the Decree which petitioner herein aims to have reversed. A certified copy of said "Reporter's Transcript" (to be hereinafter referred to as (R.T.) is in the possession of the Clerk of this Court:

"The Court: Now I have had a few of these cases. The way I understand the law is this, **any debtor, a bona fide farmer, whose principal income is derived from farming operations and principally devotes his time to the management of a farm, that is, a farmer,** such person may file a petition and submit a plan to the creditors asking the creditors to approve. If they refuse, then you have a right to file under sub-division "S", and if it is established that the petitioner is a farmer **as defined by the statute** you are entitled to proceed **under that statute."** (R. T., p. 6—Emphasis supplied).

The Court: He means what part have you taken in the farming operations? A. Well, I am a proprietor. We have a manager." (R.T., p. 10.)

"The Court: I don't see the relevancy of that. I would like to come down to the issue. **I'd like to know simply the extent of this lady's farming operation, what income she receives and what she expends in the operations of the farm** or farms on which" * * * (R.T., p. 21—Emphasis supplied.)

"The Court: Yes, that is not in issue. That has not a thing to do with the issue we are trying. **Let us confine the testimony to the issue, and that is, let Mrs. Seix testify as to what she has received and spent and what she has had to do with the operation of these farms, for the purpose of determining the one question, is she a bona fide farmer."** (R.T., pp. 13/14—Emphasis supplied.)

"The Court: Well, the agreement is in existence and if it has any relevancy it is the best evidence. **Mrs. Seix may have received large sums of money as her share of the profits of farming operations; she may have received large sums of money from benefit payments; that would not make her a farmer. A farmer, according to the bankruptcy law, is a person whose principal income is derived from farming operations which the person, the farmer, manages, controls, directs.** They need not actually perform labor on the farm themselves; but that must be their principal

business. She may receive nothing from it and still be a farmer. It may be a loss." (R.T., p. 15—Emphasis supplied.)

"Mr. Silva: I have been working on this evidence since this morning. It is our impression that we could not in the short time which we have been given produce all this proof. We would have to summon witnesses from Vieques, for example the manager of the sugar mill. For example, we have proof to establish that by the year 1936 the evidence and records in the possession of the receiver in equity case No. 2151, which is before this court, shows an undivided profit in excess of $1,700,000.00, and that statement was confirmed by Mr. Miguel Vilaró, who is the acknowledged representative of the bank. We would have to summon witnesses and get documentary evidence to prove and establish that there was another fund designated as a secret reserve of the Comunidad Jose J. Benitez e Hijos amounting to about $750,000.00 of which this debtor Carlota Benítez Sampayo has a share. **That amount represents additional income originating from her farming interest. We would have to summon witnesses and obtain documents to show that Carlota Benitez Sampayo since 1917 and up to this date, has operated her interest in Vieques in a manner which is equivalent to her own personal operation in accordance with the law, and to prove that when this operation is taken as a whole the roots of the debtors income go directly to the soil, as a farmer.** (Emphasis supplied.)

"The Court: **What has that to do with whether the petitioner is or is not a farmer? What do you understand to be a farmer, under the bankruptcy law?**

(Discussion by counsel)

"The Court: I don't think you will find any case anywhere that will sustain the proposition that a person is a farmer merely because they have an undivided interest in a farm operation. You might just as well state that a stockholder in a bank is a banker. You would not accept that. **A farmer is a person whose**

> **principal business is farming, AND whose principal income is derived from the farming operation.** The case you quote there is all right." (R.T., pp. 36/37—Emphasis and capitals supplied.)

We respectfully submit that in view of the showing made through the statements incorporated in these preliminary considerations, there is no justification for Respondent's apparent pretensions to have the case remanded to the Circuit Court of Appeals, for further proceedings, should the decree complained of be reversed by this Court.

ARGUMENT.

Principal Question Presented.

THE DEFINITION OF "FARMER" THAT APPLIED AND STILL APPLIES IN PROCEEDINGS UNDER SECTION 75 IS THAT OF SECTION 75 (r) AND NOT THAT OF SECTION 1 (17) OF THE CHANDLER ACT.

A.

GENERAL ORDER 50 AND FORM 63 ESTABLISHED BY THIS COURT DETERMINE THAT IT IS SECTION 75 (r) THAT APPLIES ALSO AFTER THE EFFECTIVE DATE OF THE CHANDLER ACT.

As alleged by petitioner herein in paragraph (1) of her petition for rehearing, seasonably filed before the Circuit Court (omitted from printed record) the General Orders in Bankruptcy, as amended and established by this Court on January 16, 1939 (released January 27, 1939, effective February 13, 1939) include General Order 50 which applies to **"Proceedings Under Section 75 of the Act."** Paragraph (9) of said General Order 50, in its pertinent part, reads as follows:

> "(9) * * * 'The petition shall show to the satisfaction of the district court that the decedent at the time of his death **was a farmer within the meaning of subdivision (r) of Section 75'** ". (Emphasis supplied.)

It was and is our contention that although that portion of paragraph (9) of General Order 50 extracted and transcribed above refers to the filing of a farmer-debtor petition by the representative of a deceased "farmer", the phrase cited is nevertheless conclusive to the extent of indicating that it is the definition of "farmer" appearing in sub-section (r) of Section 75 that applies in proceedings under said Section, also after the effective date of the Chandler Act. As already stated, said General Order 50 was established on January 16, 1939, that is, more than six months after the promulgation of the Chandler Act on June 22, 1938. We, therefore, believe that rather than having inadvertently carried over and republished old General Order L (288 U. S. 643) after a significant but unnoticed change in the law, as suggested by the Circuit Court in its opinion upon petition for rehearing (R., p. 67) this Court *advisedly* maintained unaltered the phrase cited, as well as the balance of said old General Order L, because of the fact that Section 75 was not affected by the Chandler Act, except insofar as said Section 75 was expressly amended by said Act.

General Orders in Bankruptcy have the force and effect of law. *Folda* v. *Zilmar* 14 F. (2d) 843; *In re Hodges* 4 F. Supp. 804; *In re Brecher* 4 F. (2d) 1001; *In re Lake Champlain Pulp & Paper Corp.* 20 F. (2d) 425; *Sherman & Son* v. *Corin*, 73 F. (2d) 468, 470, par. [2, 3.]

Petitioner herein further alleged in paragraph (j) of her said petition for rehearing (omitted) that through its said Order of January 16, 1939 this Court also amended and established certain forms in bankruptcy. That new Form 63, (U. S. C. A. following sec. 53) thus established and entitled "Debtor's Petition Under Section 75 of the Bankruptcy Act" follows the definition of "farmer" embodied in Section 75 (r). It was further pointed out that said Form 63 includes as one of the alternative jurisdictional requirements or qualifications the phrase "or the principal

part of whose income is derived from one or more of the foregoing operations," just as it appears in the definition of "farmer" of Section 75 (r). (Emphasis supplied.)

As is also the case with General Order 50 referred to above, we must candidly state that we cannot concur in the suggestion to the effect that the text of new Form 63 may have been also inadvertently carried over and republished through failure to appraise a significant although unnoticed change in the law. With all due respect for the view sustained in the premises by the Circuit Court, we must also in all candor state that after a thorough and painstaking investigation of all sources available and as may throw some light on the situation, we must perforce affirm ourselves in our conviction to the effect that this Court promulgated said General Order 50 and said Form 63, *advisedly* under the well grounded premise that, insofar as the definition of "farmer" in subsection (r) of Section 75 relates to proceedings under said Section, it remained altogether unaffected by the Chandler Act.

Volume 10 of the 1939 edition of Remington on Bankruptcy states the following with reference to the application of Form 63 and General Order 50 *after the effective date of the Chandler Act:*

Section 4022 page 38, 2d par.

> "The form of a debtor's petition under Section 75 is prescribed by the Supreme Court* 68 and should be followed. It is provided by the Act itself (Sect. 75 (c)) and also by General Order No. 50 (2) that the petition or answer shall be accompanied by debtor's schedules.
>
> "Section 4023. General Order 50, in its paragraphs 9 and 10, details the procedure to be followed where the personal representative of a deceased farmer desires to take advantage of Section 75." (Here follow paragraphs 9 and 10 of General Order 50)

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* 68. See official form 63 as amended Jan. 16, 1939.

We admit that in the case of *Meek* v. *Centre County Banking Co.*, (268 U. S. 426) cited by the Circuit Court in its Opinion upon petition for rehearing (R., p. 67) this Court held that a certain General Order and a certain Form taken from previous ones were without statutory warrant, and of no effect. As stated in the Opinion of this Court in that particular case, the authority conferred by the Bankruptcy Act to prescribe necessary forms and orders as to procedure, and for carrying the act into effect, is plainly limited to provisions for the execution of the act itself, and does not authorize additions to its substantive provisions. In that case, the General Order and Form involved, were contrary to the substantive provisions of the act, in a rather fundamental aspect, due to certain amendment that had gone into effect. In the present case, however, the situation differs to quite an appreciable extent.

By the time the decision to which this brief refers was rendered, the decisions were uniform in the sense that it was the definition of "farmer" in subsection (r) of Section 75 that applied in proceedings under said Section. The legislative history of the Chandler Act and of the Frazier-Lemke Act, as well as all the information that we have been able to muster after the most painstaking and protracted research, all leads us to the same conclusion, namely, that it was not the intention of Congress to in any manner, way or form affect the definition of "farmer" applicable to proceedings under Section 75, through the promulgation of the Chandler Act, as shall be hereinafter shown.

B.

Section 1 (17) of the Chandler Act did not amend or repeal by implication Subsection (r) of Section 75, which section is completely integrated.

The phrase "repeal by implication," we respectfully submit, is commonly used because convenient, to indicate

the rule of construction by which a later repugnant provision modifies or abrogates a former one. (*People* v. *Sours*, 74 P. 167, 176; 31 Col. 369, 399, 102 Am. S. R. 34.) Nevertheless, it is not an amendment in the strict sense of the word. (*People* v. *Peete*, 202 P. 51, 67, 54 Cal. App. 333; *Hogan Milling Co.* v. *Junction City*, 157 P. 1174, 1175, 98 Kan. 253.)

The Circuit Court held that "the Chandler Act • • • necessarily amends Section 75 (r)" (R., p. 63) and that "the Chandler Act amendment of Section 1 (17) *by implication* repeals Section 75 (r), so far as the old definition of 'farmer' is inconsistent with the new" (R., p. 63). The two concepts of repeal by implication and amendment are therefore used indistinctly in the opinion to reach the same conclusion. In this connection it seems in order to point out that, in the instant case, repeal by implication or amendment is deduced not from the citations included in the opinion itself (which, as far as proceedings under Section 75 are concerned, are wholly and diametrically opposed to the conclusion arrived at) but rather on the assumptions that Section 75 is not completely integrated and that the definition of "farmer" in Section 75 once having been made applicable to Section 4 (b), a new definition of "farmer" which *purportedly* amends Section 4 (b), must by the same token also amend or partially repeal by implication the definition of "farmer" in sub-section (r) of Section 75 (R., p. 63).

That Section 75, added to the Act of July 1, 1898, in the form of *emergency legislation* (*Kalb* v. *Feuerstein*, 308 U. S. 433) is **completely integrated** (at least insofar as its composition and extension provisions are concerned) has been uniformly accepted by the courts which almost invariably refer to proceedings initiated under said Section as proceedings initiated under Section 75 **(a) to (r)**. In fact, it is by this time quite well established that the con-

ditional moratorium proceedings provided by subsection (s) are a continuation of the proceedings under (a) to (r). Such being the case, it would seem to follow that subsection (r) is part of the context of the other subsections in which the term "farmer" appears in Section 75 and that the statute must, therefore, be construed in that light. The following authorities, we respectfully submit, uphold our viewpoints as to what has been stated under this subtitle:

The following has been extracted from the top of page 608 of Prentice-Hall Bankruptcy Service (latest edition) loose leaf dated September 22, 1938, the effective date of the Chandler Act:

> "Construction.—1. Courts should construe the language of the Bankruptcy Act so as to effectuate the evident purpose of the legislation, and not so narrowly as to defeat the true intent of Congress. Royal Indemnity Co. *v.* American Bond & Mortgage Co. (1933), 288 U. S. 596, 53 S. Ct. 551, 77 L. Ed. 688, 22 Am. B. R. (N. S.) 590, aff'g (C. C. A., 7th Cir., 1932), 61 F. (2d) 875, 22 Am. B. R. (N. S.) 190."

In the case of *Howard S. Palmer et al.* v. *The Commonwealth of Massachusetts* decided November 6, 1939 (308 U. S. 79), it is definitely stated that, in construing legislation, this Court has disfavored inroads by implication. The following has been extracted from the opinion of the Court, delivered by Mr. Justice Frankfurter:

> "* * * And so we have one of those problems in the reading of a statute wherein meaning is sought to be derived not from specific language but by fashioning a mosaic of significance **out of the innuendoes of disjointed bits of a statute.**" (Emphasis supplied.)

We venture to remark that the doctrine of repeal by implication is not favored by the courts.

Bouvier's Law Dictionary, Third Revision, Vol. 1. West Publishing Co. 1914.—"Context. Those parts of a writing which precede and follow a phrase or passage in question; the connection.

It is a general principle of legal interpretation that a passage or phrase is not to be understood absolutely as if it stood by itself, but is to be read in the light of the context, i.e. in its connection with the general composition of the instrument. * * * In the context of a will, that which follows controls that which precedes; and the same rule has been asserted with reference to statutes. See Construction; Interpretation; Statute."

The Century Dictionary. Revised and Enlarged Edition, Vol. II, C.—"Context. Texture; specifically, the entire text or connected structure of a discourse or writing."

In the rather recent case of *Home Owners Loan Corporation* v. *Creed*, 108 F. (2d) 153, 154 (C. C. A. 5th), decided December 16, 1939, and cited by petitioner herein under paragraph 4 (a) of her petition for rehearing, a similar situation was presented and decided by the Court. The following has been extracted from the opinion rendered by Circuit Judge Sibley in that case:

"The Chandler Act, **neither in its caption nor body**, makes any express reference to the Frazier-Lemke Act, though it expressly amends, substitutes, or repeals many provisions of former bankruptcy Acts, until near the end in Sec. 2, Sub. a, 52 Stat. 939, 11 U. S. C. A. Sect. 203, note, there is a brief extension of the stay period under 75, sub. s, and an amendment as to the Conciliator's fees. In Sect. 4, 52 Stat. 940, 11 U. S. C. A. Sect. 204 the words occur; 'Section 76 of the Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898, as amended, is hereby repealed. Except to the extent necessary to give effect to the provisions of section 6 of this amendatory Act, all Acts

or parts of Acts inconsistent with any provisions of this amendatory Act are hereby repealed.' "

"It is true, as argued by appellant, that the Chandler Act, Sec. 5, sub. b, 52 Stat. 940, 11 U. S. C. A. Sect. 1 note, says, on the subject of severability, 'Sections and subdivision headings shall not be taken to govern or limit the scope of the sections or subdivisions to which they relate.' These words seem to refer to the effect of the 'headings' on the construction of sections and subdivisions. **They do not say that provisions in one Chapter may be transplanted to another Chapter. The subjects of the several Chapters are so diverse, and the provisions in each of them are so detailed, that such transfer is not generally intended. There are frequent express adoptions from other Chapters when such are intended.**" (Emphasis supplied.)

"Section 406 (6), 11 U. S. C. A. Sect. 806 (6), declared that 'debtor' shall mean a person, other than a corporation, who could become a bankrupt under Sect. 4, 11 U. S. C. A. Sect. 22. A farmer could become a voluntary bankrupt under Sect. 4. Since Chapter XII thus may include a farmer, and since an 'arrangement' is defined in Sect. 406 (1) so broadly as to include the composition of a land mortgage under the Frazier-Lemke Act, the question really is whether Chapter XII supersedes the Frazier-Lemke Act. We think it does not. The two do not so cover the same ground as to justify the conclusion that one is to affect the other. The Chandler Act is one perfecting the **permanent** bankruptcy Acts of the United States specially dealt with by it. **The Frazier-Lemke Act, though passed as an amendment of the Bankruptcy Act, is emergency legislation limited to a brief period, once expired and since extended.** It was not intended to relieve mortgagors in general, but only farmers who were temporarily facing a peculiar and pressing financial problem. We can readily see that Congress might desire to include all mortgagees in the relief temporarily to be afforded farmers, but might desire to except quasi public loans from the general and permanent scheme for arranging real estate

mortgages. The special plan for temporary agricultural relief ought not to be considered as overriden or superseded by the general provision, though the latter may be open also to a farmer. The rule is that special legislation is not repealed by later general legislation unless the repeal be express or the implication to that end is irresistible; the special remains in force as an exception to the general. Washington *v.* Miller, 235 U. S. 422, 35 S. Ct. 119, 59 L. Ed. 295; Ex parte United States, 226 U. S. 420, 33 S. Ct. 170, 57 L. Ed. 281; Petri *v.* Creelman Lumber Co., 199 U. S. 487, 26 S. Ct. 133, 50 L. Ed. 281; United States *v.* Nix, 189 U. S. 199, 23 S. Ct. 495, 47 L. Ed. 775. That Sect. 75 was not thought by Congress to be superseded is shown by the minor amendments made in it as above stated. (Emphasis supplied.)

"We conclude that Sect. 75 is unaffected by the Chandler Act (except as it is expressly amended by it), and the judgment is affirmed." (Emphasis supplied.)

It seems in order to remark at this point that while a Circuit Court of Appeals is not usually bound to follow a decision of another circuit, it is rule in the First Circuit that the Court will do so, when question decided involves construction of a Federal statute, unless the Court should be of the opinion that the decision is clearly wrong. (*Sherman & Son* v. *Corin* (C. C. A. 1, 1934) 73 F. (2d) 468, 470, par. [2, 3.] Prentice-Hall Bankruptcy Service, latest edition, p. 985, Note 2.) The decision in *Home Owners Loan Corporation* v. *Creed*, just transcribed, was rendered on December 16, 1939, while the decision to which this brief refers was rendered on January 10, 1940. Said decision rendered in *Home Owners Loan Corporation* v. *Creed* on December 16, 1939 was brought to the attention of the Circuit Court of Appeals by petitioner herein through her petition for rehearing, seasonably filed (Allegation 4 (a) omitted). Said petition for rehearing was denied on February 21, 1940 (R., p. 66).

We venture to suggest at this point the following com-

ment upon the quotation from the Respondent's brief incorporated at pages 11 and 12 of this brief :

1. The words of the Chandler Act itself, (Act of June 22, 1938, Public No. 696, 75th Congress, Chapter 575, Third Session, H. R. 8046), relative to the definition of a "farmer" in Section 1 (17), quoted by respondent are:

> "Section 1. MEANING OF WORDS AND PHRASES —**The words and phrases used in this Act** (This is in the Chandler Act) and in proceedings pursuant hereto shall, unless the same be inconsistent with the context, be construed as follows:
>
> "17 'Farmer' * * *". (Then follows the definition of the word farmer.) (Emphasis supplied.)

2. Section 75 of the Bankruptcy Act (U. S. C., Title 11, Section 203) stands unaffected by the Chandler Act which names in its enacting clause and in Sections 2, 3, and 4 thereof, *precisely* what sections of the Act of July 1, 1898, are amended or repealed. Section 75, the farmer-debtor moratorium law, was neither repealed nor amended in any wise except in those respects specifically named in Section 2 (a) and (b) of the Chandler Act (52 Stat. 939). Section 2 (a) authorized an extension of the moratorium provided in Section 75 (s) (2) in certain instances to November 1, 1939, and Section 2 (b) amended Section 75 (b) relating to compensation for conciliation commissioners. Section 75 (r) which defines a "farmer" for the purposes of Section 75 was in no way changed by the Chandler Act.

In the opinion rendered in John Hancock Mutual Life Insurance Co. v. Benno Bartels, 308 U. S. 180, this Court, in affirming the decree of the Circuit Court of Appeals for the Fifth Circuit said:

Page 184:

> "Provisions for proceedings by a farmer to obtain a composition or extension, when he is insolvent or

unable to pay his debts as they mature, **are found in subsections (a) to (r) of Section 75.** For that relief Bartels had presented his petition under subsection (s) and the District Court had approved the petition as properly filed." (Emphasis supplied.)

Bottom of page 184:

"* * * The plain purpose of Section 75 was to afford relief to such debtors who found themselves in economic distress however severe, by giving them the chance to seek an agreement with their creditors **(subsections (a) to (r)** and, failing this, to ask for the other relief afforded by subsection (s)." (Emphasis supplied)

The following further appears towards the end of the opinion rendered in said case:

Center of page 187:

"The scheme of the statute is designed to provide an orderly procedure so as to give whatever relief may properly be afforded to the distressed farmer-debtor, while protecting the interests of his creditors by assuring the fair application of whatever property the debtor has to the payment of their claims, the priorities and liens of secured creditors being preserved. See Wright *v.* Vinton Branch, Supra; Adair *v.* Bank of America Association, 303 U. S. 350, 354-357; Wright *v.* Union Central Life Insurance Co., 304 U. S. 502, 516, 517."

The following has been extracted from the case of *Noah Adair* v. *Bank of America,* decided by this Court on February 28, 1938 (303 U. S. 350):

Page 357:

"In accordance with Section 75, subsection (b), this Court, as of April 24, 1933, established Rule L, governing proceedings **under Section 75, (a) to (r) inclusive,** as an addition to the General Orders in Bankruptcy, 288 U. S. at 641." (Emphasis supplied)

As already pointed out at the beginning of this brief, in *Kalb* v. *Feuerstein et ux*, (308 U. S. 433,) decided January 2, 1940, this Court made the following statement, which, we respectfully submit, further confirms our viewpoint to the effect that Section 75 is *completely integrated*:

Page 433:

"Congress set up in the Act an **exclusive** and easily accessible statutory means for rehabilitating distressed farmers, who, as victims of a general economic depression, **were without means to engage in formal court litigation.**" (Emphasis supplied.)

In the opinion rendered by this Court in *Union Joint Stock Land Bank of Detroit* v. *Byerly* (310 U. S. 1) decided April 22, 1940 this Court said:

"February 11, 1935, the respondent abandoned proceedings **under subsections (a) to (r)** of Section 75 and filed an amended petition to be adjudged a bankrupt pursuant to Section 75 (s)." (Emphasis supplied)

The following has been extracted from the opinion rendered by this Court in *Borchard* v. *California Bank and California Trust Co.*, (310 U. S. 311) decided by this Court on May 20, 1940:

"It is to be noted that Sect. 75 contains no provision for appraisal during the course of the conciliation proceedings **covered by subsections (a) to (r).**" * * * (Emphasis supplied)

In the opinion rendered in the case of In re Brown, 21 F. Supp. 935, the District Court said:

"Page 938. (4) It has been recently determined that the entire proceedings under section 75, including the composition and the proceedings under subsection (s), as amended, 11 USCA sec. 203 (s), are one

continuous proceeding, all based upon the idea of a settlement and compromise between the debtor and his creditors. * * *"

The case of *Island Improvement Co.* v. *Holman et al.* (C. C. A. 10, 1938), 99 F. (2d) 63, confirms the theory of In Re Brown, just cited, besides showing the usual reference to Section 75 (a) to (r). The following has been extracted from the opinion in that case:

Page 64:

"On March 21, 1934, the Holmans filed separate petitions for debtor's relief **under subsections (a) to (r) of Section 75 of the Bankruptcy Act,** 11 U. S. C. A. sec. 203 (a-r). * * *" (Emphasis supplied)

Page 66:

"Subsection (s) is the only provision in the act authorizing the requirement of rental and it has no application unless and until the debtor proceeds under its terms. **Proceedings under its terms are merely a continuation of proceedings previously instituted under other provisions of the section.** Bradford *v.* Fahey, 4 Cir. 76 F. 2d 628." To the same effect Cohan *v.* Elder (C. C. A. 9, 1940) 112 F. (2d) 967.

The opinion rendered on June 28, 1939 in *Gray* v. *Union Joint Stock Land Bank* (C. C. A. 6) 105 F. (2d) 275, also shows the usual reference to section 75 (a) to (r) as follows:

Page 277. "On January 18, 1938 appellant Carl H. Gray filed his petition under **Section 75 (a) to (r).**" To same effect, Paradise Land & Livestock Co. *v.* Federal Land Bank of Berkeley, Cal. (C. C. A. 10th., 1939) 18 F. (2d) 832. (Emphasis supplied.)

The statement incorporated at the beginning of Chapter I of the Bankruptcy Act, as amended by the Chandler Act, to the effect that the definitions therein contained shall

apply "unless inconsistent with the context," refers, we respectfully submit, to the context of any particular Section or chapter, taken as a whole and not to the context of the individual sub-sections of any section or Chapter, as suggested by the Circuit Court (R., p. 62).

As already pointed out, one of the principal conclusions arrived at by the Circuit Court is to the effect that were subsection (r) to be considered to be part of the context of the other subsections of Section 75 in which the term "farmer" appears, it must be likewise considered part of the context of Section 4 (b) and that the latter Section having been **purportedly** amended by Chapter I, Section 1 (17), the definition of "farmer" of Section 75 (r) has been thus repealed by implication, "so far as it is inconsistent with the new." This conclusion, we respectfully submit, is altogether too disconnected from the applicable rules of construction previously established by this Court, as well as diametrically opposed to the history of the legislation involved.

It seems in order to mention that even in the case of the other debtor relief provisions which were intentionally and exhaustively dealt with through the Chandler Act, and which are now permanent legislation, construction of the statute is to be determined by the context of the particular chapter and its obvious purpose and not by taking each subsection by itself, and detaching it from the rest. (*Kunze* v. *Prudential Ins. Co. of America* (C. C. A. 5, 1939) 106 F. (2d) 917. It would therefore seem to follow that in the case of special emergency legislation which is **completely integrated**, as is the case with the Frazier-Lemke Act, such procedure should be followed with ever so much more particularity than in construing permanent legislation exhaustively dealt with through the Chandler Act. As stated in *Home Owners Loan Corporation* v. *Creed*, 108 Fed. (2d) 153, at page 154, "*the rule is that special legislation*

is not repealed by later general legislation, unless the repeal be express or the implication to that end irresistible," the special remaining as an exception to the general (Italics supplied).

As pointed out in paragraph (g) of the petition for rehearing seasonably filed by petitioner herein in the Circuit Court, (omitted) in the case of proceedings for the relief of debtors which were incorporated in the Bankruptcy Act through the Chandler Act in the form of **permanent legislation**, it was definitely provided that the provisions of the original Bankruptcy Act, as amended through the Chandler Act (Chapter I to VII inclusive) **insofar as they are not inconsistent or in conflict with the provisions of the particular chapter**, apply in proceedings under the said chapter and that for the purposes of such application, provisions relating to "bankrupts" shall relate also to "debtors" etc. (Chapter X, sec. 102 (11 U. S. C. sec. 502); Chapter XI, Sec. 302 (11 U. S. C. sec. 702); Chapter XII, Sec. 402 (11 U. S. C. sec. 802); Chapter XIII, Sec. 602 (11 U. S. C. sec. 1002) (Emphasis supplied).

No such provision was incorporated in the Chandler Act in connection with Section 75 of the Bankruptcy Act. Consequently, and in view of the well established rule to the effect that what includes one, excludes the rest, it follows that it was not intended by Congress to have said provisions of Chapter I to VII apply in the case of farmer-debtors who might resort to the relief made available to them by section 75 of the Bankruptcy Act. In this connection it also seems in order to point out that pursuant to the express provisions of Section 75 (n) (11 U. S. C. sec. 203 (n)) the general provisions of the Bankruptcy Act do not apply until *"the day when the farmer's petition asking to be adjudged a bankrupt"* is filed. Until that event occurs, and except as otherwise provided by the Frazier-Lemke Act, the exclusive provisions of Section 75 (a) to (r) must be followed, to the exclusion of the general provisions of the

Bankruptcy Act. This theory as to *"the line of cleavage"* was sustained by this Court in *Wright* v. *Union Central Life Insurance Company* (304 U. S. 502, 512). The decision just cited refers to the line of cleavage as to property, but it has been recently held that same applies also in every other respect. *In re Kovacevich* (D. C. S. D., Cal., N. D., 1940), 31 F. Supp. 566. That being the case, it is impossible to escape the inevitable conclusion to the effect that were the decision to which this brief refers to be upheld, we would then be faced with the ever so much more anomalous situation of having the definition of "farmer" in Section 75 (r) apply while the farmer debtor should be proceeding under (a) to (r) while the definition of "farmer" of Section 1 (17) of the Chandler Act would nevertheless apply upon the filing of the amended petition asking to be adjudged a bankrupt under subsection (s) (Italics supplied).

That this Court still sustains the view that Section 75 was not affected by the Chandler Act is now ever so much more apparent from the decision rendered in the case of *Wright* v. *Union Central Life Insurance Company,* brought for the second time before this Court and decided December 9, 1940. (No. 51, October Term, 1940.)

Footnote 1, which forms part of the Opinion rendered in that case, in citing certain amendments to Section 75, refers to the two minor ones incorporated through the Chandler Act, namely, the ones shown in 52 Stat. 939, and goes on to state that Section 75, *as it now stands,* appears in Title 11, Sec. 203 U. S. C., *which includes Section 203 (r).* Since one of those two minor amendments is the one which amends subsection (b), it is evident that it was not intended to limit the citation to matters dealing with subsection (s). Consequently, it seems that the portion of the citation referred to is conclusive to the effect that this Court sustains the view that Section 75 was not affected by the Chandler Act, except insofar as expressly amended by it.

Another amendment cited in said footnote 1 is the Act of March 4, 1940, (No. 423, 76th Cong. 3d. Sess., c. 39), referred to on page 4 of this brief, whereby Section 75 was extended up to March 4, 1944 and reference to Section 74 omitted from the definition of "farmer" in Section 75 (*r*), for initiating proceedings under it. As already stated, said footnote 1 ends with these significant words: "Section 75, **as now in force**, appears in 11 U. S. C. § 203." (Emphasis supplied.)

That Section 203 of title 11 of the United States Code showed Section 203 subsec. (r), that is, Section 75 (r), unaffected by the Chandler Act is pointed out in the Opinion of the Circuit Court (R. 63) although with the remark that codification is only presumptive evidence of the laws. Nevertheless, now that the contents of the original of the Code that are pertinent to the issue have been cited with approval in a recent opinion of this Court, as hereinbefore set forth, we believe that we can in all frankness state that it is the opinion of this Court that the definition of "farmer" that applied and still applies in proceedings under Section 75, is the one in Section 75 (r), that is, the one in Title 11 U. S. C. Section 203, subsec. (r).

The reference to U. S. C. Sect. 203 in footnote 1, transcribed hereinabove, would besides seem to support our theory to the effect that Section 75 is completely integrated and must be treated and construed as a whole.

C.

The Definition of "Farmer" in Section 75 (r) is Still Applicable to Proceedings Under Section 4 (b) of the Bankruptcy Act.

The question of the applicable definition of "farmer" in proceedings under Section 4 (b) of the Act of July 1, 1898, as codified, amended and revised, as to certain portions

thereof, through the Chandler Act, should not normally appear in a discussion of the issue to which this brief is directed. Nevertheless, since the conclusion arrived at by the Circuit Court of Appeals as to the applicable definition of "farmer" in proceedings under Section 75, has its origin in the principal premise established to the effect that the definition of "farmer" of Section 1 (17) of the Chandler Act is applicable to proceedings under Section 4 (b), it would seem advisable to deal with this feature exhaustively, in order to pave the way towards a complete determination of the legislative intent.

It seems worthy of note that, even as early as the year 1910, that is, long before Section 75 was enacted, it had been already established that it was not intended that definitions of words used in the Bankruptcy Act which read *"shall include"* should exclude other meanings or definitions of the word, or limit the ordinary usage, as is the case with definitions which read *"shall mean."* (*In re Harper* (D. C. N. Y.) 175 F. 412, 423). The definition of farmer of Section 1 (17) includes both phrases, that is, *"shall mean"* and *"shall include"*. We, therefore, respectfully submit that said definition was intended to revive the traditional concept of farmer and have it apply to Chapters XI and XII of the Bankruptcy Act and to all other situations which might present themselves in bankruptcy proceedings, while at the same time maintaining the definition of Section 75 (r) to apply in proceedings under Section 4 (b) and Section 75, as shall be hereinafter discussed in detail.

The reasons advanced by the Circuit Court of Appeals in its opinion in support of its conclusion to the effect that the definition of farmer incorporated for the first time in Chapter I of the Bankruptcy Act, through Section 1 (17) of the Chandler Act, amended the definition of "farmer" of Section 75 (r), insofar as the latter affects proceedings under Section 4 (b) of the Bankruptcy Act, are as follows:

(a) That the original definition of "farmer", (as the concept is understood to-day) was incorporated in the Act of July 1, 1898 with the debtor relief provisions added through the Act of March 3, 1933 (47 Stat., 1467, 1469 and 1473.) In this connection it is pointed out by the Circuit Court that the original definition of "farmer" of Section 75 (r) (47 Stat. 1473) was not made applicable to Section 4 (b) of the Bankruptcy Act (30 Stat. 544; 47 Stat. 47.) (R., p. 61)

(b) That the first Frazier-Lemke Act (48 Stat. 1289) added subsection (s) but made no change in the definition. (R., p. 61)

(c) That the Act of May 15, 1935 (49 Stat. 246) took pains to establish a consistent definition of "farmer" throughout the Bankruptcy Act, section 4 (b) having been amended so as to read "except a wage earner or a farmer" and Section 74 (l) so as to read "a wage earner or a farmer," while the definition of "farmer" was amended to read as it appears on page 4 of this brief. (R., p. 61)

(d) That the second Frazier-Lemke Act (49 Stat. 943) enacted a new subsection (s) but made no change in the definition of "farmer" **which stood until the passage of the Chandler Act.** (R. p. 62—Emphasis supplied.)

(e) That "for the first time, by the Chandler Act, a definition of 'farmer' was inserted in Chapter 1, Section 1 of the Bankruptcy Act, entitled 'Definitions' ", citing the pertinent portions of Chapter I, Section 1 (17), exactly as transcribed on page 4 of this brief. (R., p. 62)

(f) That Section 75 is a part of the Bankruptcy Act. That subsections (c) and (s) of Section 75 speak of the filing of a petition and an amended petition by a "farmer". That "there is nothing in the context of these subsections inconsistent with applying to the word 'farmer' the new defini-

tion in Section 1 (17)." That Section 75 (r) contains what is designated by the Circuit Court as the **old** definition of "farmer", but that this definition cannot be considered part of the "context" of the other subsections in which the word "farmer" is used. That were it so considered, it must equally be considered part of the "context" of the Section 4 (b) in which "farmer" appears, because by the express provisions of Section 75 (r) the definition of "farmer" there given was to apply to Sections 4 (b) and 74 as well as to Section 75. (R., p. 62)

(g) That it is clear that the new definition of "farmer" in Section 1 (17) was intended to apply to Section 4 (b) since Report No. 1409 of the House Committee on the Judiciary (75th. Cong. 1st. Sess.—July 29, 1937, p. 6) states: (R., p. 62)

> " 'Farmer'.—New clause (17): The amendment of May 5, (15), 1935 (11 U. S. C. Ann., sec. 203) extends the meaning of the term 'farmer' to include dairy farmers and persons engaged in the production of poultry or livestock or its products in their unmanufactured state, whose principal income is derived from any one or more of these corporations. Correspondingly, section 4 of the act is amended by substituting the phrase 'a farmer' for the language 'a person engaged chiefly in farming or the tillage of the soil.' (See 11, U. S. C. Ann., sec. 22.) Pursuant to this purpose of Congress to expand the meaning of the term it would seem advisable to formulate a new definition and to include it in section 1 as clause (17)." (R., p. 63)

(h) That the Circuit Court finds no intimation in the language of said Report No. 1409 of an intention on the part of Congress to reintroduce the awkward situation of having "farmer" mean one thing in Section 4 (b) and something else in Section 75,—"a situation which Congress had carefully eliminated by the Act of May 15, 1935, *supra*." That

the Chandler Act in applying the new definition of "farmer" to Section 4 (b) necessarily amends Section 75 (r). That Section 4 (b) "is now governed by the **general** definition in Section 1 (17)," and "there is no longer any Section 74, which has been transposed to a later part of the Act, old section 74 (l) referred to above now appearing as section 379, 52 Stat. 913," (11 U. S. C. A. Sect. 779). (R., p. 63) (Emphasis supplied.)

s(i) That the 1938 edition of the United States Code (11 U. S. C. A. sec. 203 (r)) includes "*old* Section 75 (r) as though it had been unaffected by the Chandler Act," but that "the codification is only presumptive evidence of the laws (1 U. S. C. Sec. 54 (a))" and that the Circuit Court is persuaded from a review of the legislative history that "the Chandler Act amendment of Section 1 (17) **by implication** repeals Section 75 (r), so far as the *old* definition of 'farmer' is inconsistent with *the new.*" (Emphasis and italics supplied.) (R., p. 63)

(j) That Section 4 of the Chandler Act, 52 Stat. 940, contains the cautionary provision that "* * * all Acts or parts of Acts inconsistent with any provisions of the amendatory Act are hereby repealed." (R., p. 63)

(k) That the Report of the House Committee on the Judiciary, referred to in footnote 1, supra, (please refer to footnote 2) "contains an addendum indicating the changes in the existing law made by the Chandler Bill as it then read." That at page 144 of said Report there is this statement: "SEC. 75 AGRICULTURAL COMPOSITIONS AND EXTENSIONS. (No change.)" That this can hardly be taken literally for, as has been pointed out, Section 75 (r) "has certainly been amended to the extent that the old definition of 'farmer' therein contained is no longer to be applied to Section 4 (b)". That said phrase "No change" seems to refer not to the definition, but to

the substantive and procedural provisions dealing with relief to distressed farmers, the Circuit Court pointing out further that Section 2 of the Chandler Act, 52 Stat. 939, does specifically amend Section 75 "in certain particulars not now relevant." (R., pp. 63, 64, footnote)

(l) Whereupon the Circuit Court announced its final decision as follows:

> "We take it, therefore, that the applicable definition is found in the new Section 1 (17); 'Farmer' shall mean an individual personally engaged in farming or tillage of the soil, and shall include an individual personally engaged in dairy farming or in the production of poultry, livestock, or poultry or livestock products in their unmanufactured state, IF the principal part of his income is derived from any one or more of such operations." (Emphasis supplied) (R., p. 64)

Careful analysis of the various pronouncements of the Opinion of the Circuit Court of Appeals, as hereinbefore set forth, leads to the inevitable conclusion that the holding to the effect that Section 1 (17) of the Chandler Act is the one that governs in proceedings under Section 4 (b), after the effective date of the Chandler Act, is based principally upon the interpretation placed by the Circuit Court on the contents of Report No. 1409 of the House Committee on the Judiciary cited in the Opinion and extracted and transcribed in paragraph (g) hereinabove. Consequently, it seems in order to analyze and discuss said Report No. 1409 in detail, in order to try and establish its actual meaning. With that object in view, we shall first proceed to dissect said report, so as to later on show what we believe to be its true import.

It seems in order to remark at the outset that such portions of said Report No. 1409 as have been extracted and transcribed in the Opinion, (which portions were apparently inadvertently carried over from the report submitted

to Congress by the National Bankruptcy Conference—University of Chicago Law Review (1937) 369, at pp. 376/7) are somewhat erratic or loosely worded when viewed in the light of the following self-evident facts:

(a) Said Report refers to the Act of May 5, 1935, whereas, as pointed out by the Circuit Court, reference was intended to the Act of May 15, 1935 (49 Stat. 246.) (R., p. 63.)

(b) It fails to take into consideration the all-important feature to the effect that the second branch of the definition of "farmer" referred to, as ratified through said Act of May 15, 1935, was used by way of contrast, by failing to incorporate in the language cited, the disjunctive "**OR**" (*First National Bank & Trust Co.* v. *Beach* (301 U. S. 435)). Indeed, that portion of the Report referred to, instead of showing that there are two branches to the definition, implies that there is only one, that is, that the "farmer" must be engaged in one or more of the farming operations, and, besides, his principal income must be derived therefrom.

It seems in order to state that the word "corporations" substituted for "operations," does not represent an error arising from the House Report. Such substitution appeared for the first time in the printed opinion of the Circuit Court of Appeals and was thus inadvertently carried into the official report (109 F. (2d) 743, 749.) (R., p. 63.)

(c) Said Report refers to substituting the phrase "a farmer" for the language "a person engaged chiefly in farming or the tillage of the soil." This, as set forth in the Opinion of the Circuit Court (R., p. 61) was already accomplished through the said amendment of May 15, 1935. A different interpretation would be contrary to the avowed purpose announced in the last sentence of that part of the report cited "*to expand the meaning of the term.*" (Italics supplied)

It is our opinion that said last sentence, taken in conjunction with the rest, is what actually shows the true import. Said last sentence reads "Pursuant to this purpose of Congress **to expand the meaning of the term, it would seem advisable to formulate a new definition,** and to include it in Section (1) as clause (17)." (Emphasis supplied.)

To us it seems quite obvious that the portion cited of the particular report, up to its last sentence transcribed in the preceding paragraph, rather than aiming to set forth what had been done in connection with the proposed additional definition of farmer (which the last sentence recommended how it might be formulated later on) simply aimed to state what had been previously done to Section 75 (r), through the said amendment of May 15, 1935, as hereinbefore shown. What seems to have actually occurred is that, as is the case with the other errors committed, the second sentence of the Report reads "Correspondingly, section 4 of the act **IS** amended," whereas it was undoubtedly meant to state that said section 4 **WAS** (had been) amended by substituting the phrase "a farmer" for the language "a person engaged chiefly in farming or the tillage of the soil." That the substitution mentioned referred to the prior elimination of the traditional concept of farmer by giving preference to the present day concept, not only follows from the language employed but also from the avowed intent, declared in the last sentence, that is, "**TO EXPAND THE MEANING OF THE TERM.**" Certainly, no such expansion could be anticipated by recommending that the opposite be brought about, namely, the substitution of the traditional concept of a farmer for the present day concept. (Emphasis supplied.)

We must respectfully insist that the portion of the Report cited, up to the last sentence, simply aimed to state the situation as it existed after the amendment of May 15, 1935. On the other hand, the last sentence cited, represented nothing else than a recommendation as to what should be done later

on in formulating THE OTHER definition of farmer to be incorporated as Section 1 (17) as part of the permanent provisions of the Bankruptcy Act.

Following the established practice, we shall now proceed to transcribe hereinbelow the paragraph extracted by the Circuit Court of Appeals from the particular Report, enclosing in brackets the matter that we believe to have been erroneously stated, excluded or included and in capitals or arabic numerals what we believe was intended to be set forth.

> " 'Farmer'—New Clause (17): The amendment of May [5] 15, 1935 (11 U. S. C. Ann., Sec. 203), [extends] **EXTENDED** the meaning of the term 'farmer' to include dairy farmers and persons engaged in the production of poultry or livestock or its products in their unmanufactured state, **OR** whose principal income is derived from any one or more of these [corporations] **OPERATIONS**. Correspondingly, section 4 of the act [is] **WAS** amended by substituting the phrase 'a farmer' for the language 'a person engaged chiefly in farming or the tillage of the soil.' (Sec. 11 U. S. C. Ann., sec. 22.) Pursuant to this purpose of Congress to expand the meaning of the term, it would seem advisable to formulate a new definition and to include it in section 1 as clause (~~17~~)."

We shall now proceed to set forth our reasons for our belief to the effect that it was never intended to have the other definition recommended by the particular Report to be formulated later on, to apply to proceedings initiated under Section 4 (b) of the Bankruptcy Act.

As stated by the Circuit Court in its Opinion (R. 63) "there is no longer any section 74, which has been transposed to a latter part of the Act." This situation, however, was properly taken care of through the Chandler Act, as shown hereinbelow.

The following is transcribed from 1940 Replacement Vol-

ume 3 of Federal Code Annotated, having reference to Section 74, p. 69, 13th paragraph from the top:

> "Provisions similar to those of sub-division (l) are now contained in sections * * * 779 * * * 884, post."

Reference to the sections mentioned in the foregoing citation discloses that section 779 referred to is the one in Chapter XI (U. S. C. Title 11, sec. 779) which provides that "no adjudication shall be entered under this Chapter (sections 701 to 799 of this title) against a wage earner or farmer unless such person shall in writing file with the court consent to the adjudication (June 22, 1938, c. 575, sec. 1, 52 Stat. 913)." On the other hand, the other section mentioned, namely, section 884, deals with an identical provision incorporated in Chapter XII (U. S. C. Title 11, sections 801 to 926).

As pointed out by the Circuit Court in its Opinion (R., 62) the reference to Section 74 in the definition of "farmer" of Section 75 (r) had not at the time been eliminated. But, looking at the situation in retrospect, we are able to ascertain that as soon as the error was discovered, Congress proceeded to make proper amends towards that end, at the same time leaving no room for further uncertainty as to what had been the legislative intent, as far as the continued application of the definition of "farmer" in Section 75 (r) to proceedings under Section 4 (b) was concerned. We refer to Public No. 423 76th Congress [Chapter 39—3d Session] [S. 1935], approved March 4, 1940, cited by this Court in *Wright* v. *Union Central Life Insurance Company*, decided by this Court December 9, 1940, as hereinbefore set forth. Through said Act, Congress eliminated all reference to Section 74 because "Reference to Section 74 is confusing" and for that reason the committee recommended "that such reference be stricken out of the law." (76th Cong.

3rd Sess., House Report No. 1658, dated February 21, 1940, Committee to the Committee of the Whole House on the state of the Union, submitted by Mr. McLaughlin, from the Committee on the Judiciary.) It seems altogether significant and indeed decisive as to the issue to which this sub-title is directed, that reference to Section 4 (b) was not eliminated from the definition of "farmer" in Section 75 (r) but, on the contrary, retained. That such reference to Section 4 (b) in the definition of "farmer" of Section 75 (r) was thus retained advisedly, is established in bold relief through subsequent events which are altogether conclusive in that respect.

On June 10 (legislative day, May 28), 1940, Senator Nye, acting on behalf of Senator Frazier, presented an amended copy of Senate Document 55 (the Frazier-Lemke Act, 75th Cong. 1st Sess.) entitled "Agricultural Compositions and Extensions," which amended copy of document "was ordered reprinted with certain changes, as indicated therein (please refer to Cong. Record—Senate, for the date mentioned, temporary page 11865 under title "Agricultural Compositions and Extensions," referred therein as S. Doc. No. 205). Pursuant to that request, said Senate Document No. 55, showing the changes indicated, was reprinted. The cover of said document reads as follows:

76th Congress, 3d Session — SENATE — Document No. 205

AGRICULTURAL COMPOSITIONS AND EXTENSIONS

SECTION 75 OF THE BANKRUPTCY ACT AS AMENDED BY—

Public 296 of the Seventy-third Congress
Public 60 of the Seventy-fourth Congress
Public 384 of the Seventy-fourth Congress

Public 439 of the Seventy-fifth Congress
Public 696 of the Seventy-fifth Congress
Public 423 of the Seventy-sixth Congress

Title 11, Section 203, United States Code

(Reprint of Senate Document No. 55,
75th Congress)

PRESENTED BY MR. NYE
FOR MR. FRAZIER

June 10 (legislative day, May 28), 1940—Ordered to be printed with certain corrections

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UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON: 1940

Reference to said reprint, showing the Frazier-Lemke Act as it thus stood with the imprint of approval from the U. S. Senate, as late as June 10, 1940, and as it now stands, will show that the definition of "farmer" of Section 75 (r) appears as follows on pages 5 to 6 thereof:

> "(r) For the purposes of this section, and section 4 (b), ~~and section 74,~~ the term 'farmer' includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also

any individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such operations occur."

The foregoing, we respectfully submit, definitely confirms the intent of the United States Senate as to the continued application of the definition of "farmer" in Section 75 (r) also to proceedings under Section 4 (b), **after the effective date of the Chandler Act.** It now behooves us to show that the anverse of the picture is exactly the same, by establishing that the House of Representatives, also as late as the year 1940, agreed with that viewpoint in every respect.

Report No. 1658 of the House of Representatives, 76th Congress, 3rd Session, (supra) submitted by Mr. McLaughlin from the Committee on the Judiciary on February 21, 1940, page 12 thereof, shows how S. 1935 was "amended and reported by the Judiciary Committee." The portion that is here pertinent, literally transcribed, reads as follows:

"Sec. 75, (r). For the purposes of this section [,] and section 4 (b) [, and section 74,] the term 'farmer' includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such operations occur."

The Senate concurred in this amendment which was carried into the Act of March 4, 1940, (Public No. 423, 76th Cong., 3d Sess., C. 39, S. 1935).

We believe to have thus far established that the other definition of farmer incorporated for the first time in the Bankruptcy Act under Chapter I, entitled "Definitions", as Section 1 (17), through the Chandler Act, was not intended to apply to proceedings under Section 4 (b) of the Bankruptcy Act. That although reference to Section 74 was temporarily retained in the definition of "farmer" in Section 75 (r), as soon as this confusing situation was discovered, such reference to Section 74 was eliminated through direct action of Congress, by means of the clarifying amendment represented by Public 423 of the Seventy-sixth Congress. We have further established that, in promulgating the Chandler Act, special pains were taken to transfer the provisions of Section 74 (l) dealing with exemption from adjudication of a wage earner or farmer, without his consent, to permanent Chapters XI and XII, to which the provisions of Section 74 (together with those of Sections 12 and 13 of the Bankruptcy Act—U. S. C. Title 11, secs. 30 and 31) were transposed and that, besides, express provision was made for the application of the provisions of Chapters I to VII of the Bankruptcy Act to the amended proceedings for the relief of Debtors converted into permanent legislation through the Chandler Act, but not to emergency legislation not affected by said Act, except insofar as it was expressly amended by it.

From what has been hereinbefore set forth, it appears that adequate relief had been afforded by Congress to distressed farmer-debtors, some time prior to the promulgation of the Chandler Act, by extending the provisions of Section 75 up to March 4, 1944 (Act of March 4, 1940—Public Law No. 423, 76th Congress) and maintaining the applicability of the definition of "farmer" in subsection

(r) of Section 75 to proceedings under said Section, as as to involuntary proceedings filed against a "farmer" der Section 4 (b). Such action provided the means whe a farmer debtor could not be thrown into bankru except through his express consent, during the perio depression in farm values. (*Paradise Land & Lives Co.* v. *Federal Land Bank of Berkeley, Cal.* (C. C. A 1939) 108 F. (2d) 832. Even in the case of the far debtor consenting, he is entitled to demand that the pending liquidation in bankruptcy of his estate be verted into proceedings for the relief of debtors and upon his adjudication of bankruptcy, such adjudic be had and further proceedings be conducted pursua the exclusive provisions of Section 75 (s). That su the case, is quite apparent from the alternate provi of Section 75 (c) (11 U. S. C., sec. 203 (c)) which pe the farmer-debtor to either initiate Section 75 proceed himself, through the filing of a petition under said Se or else to convert involuntary proceedings previously against him under Section 4 of the Bankruptcy Act, Section 75 proceedings, through the mere expedienc requesting such relief upon the filing of his answer t involuntary petition of bankruptcy.

In view of the foregoing, it seems quite obvious Congress could have never intended to have the defin of "farmer" which would determine the farmer-de status, to be one in the case when proceedings are initi by the farmer-debtor through his original petition u Section 75 and another (and at that, a more restricted when the farmer-debtor was actually forced to take vantage of the relief expressly provided for him by gress, through the filing of an answer in involuntary ceedings. There, we respectfully submit, lies the wis of Congress (as well as the necessity) of providing a form definition of "farmer" that will apply irrespe

of whether the proceedings are initiated through voluntary action or through proceedings instituted against the farmer-debtor. It is evident that, in either case, Congress intended to provide and did provide the same safeguards and identical relief, by making the definition of "farmer" in subsection (r) applicable to voluntary proceedings initiated under said Section as well as to involuntary proceedings initiated against the farmer-debtor under Section 4 (b).

Congress having thus adequately provided for the farmer-debtor's plight, throughout the duration of the emergency and for that period only (Section 75 (s) (6)) it seems only natural that it may have likewise decided to provide a general, more stringent and permanent definition of farmer, to apply to other situations in which the farmer-debtor may not become directly involved, unless he should see fit to do so. That, in effect, is the spirit of that part of the decision rendered by the Circuit Court of Appeals for the Fifth Circuit on December 16, 1939 (*Home Owners' Loan Corporation* v. *Creed, supra*) insofar as it relates to the situation just discussed.

D.

The Legislative History Conclusively Establishes That Congress Never Intended to Amend, Repeal or in Any Other Manner Affect the Definition of "Farmer" in Sub-Section (R) of Section 75, Insofar as it Applies to Proceedings under Said Section, Through the Promulgation of the Chandler Act.

A catalogue of the amendments to Section 75 of the Bankruptcy Act, that is, the Act of March 3, 1933, c. 204, 47 Stat. 1467, known as Public Law No. 420, 72d Congress (H. R. 14359) in chronological order, is as follows:

(a) The Act of June 7, 1934, c. 424, 48 Stat. 911, known

as Public Law No. 296, 73d Congress (H. R. 5884) gave free use of the mails to conciliation commissioners in connection with official business (sec. 6, H. R. No. 194, 73d Cong. 1st Session, p. 12); amended the first sentence of subsection (a) to read as it now stands (sec. 8) and subsection (b) so as to increase the compensation of the conciliation commissioner to $25.00 (sec. 9).

(b) The Act of June 28, 1934, c. 869, 48 Stat. 1289, known as Public Law No. 486, 73d Congress (S. 3580) added Section 75 (s) declared unconstitutional by this Court on May 27, 1935 in *Louisville Joint Stock Land Bank* v. *Radford* (295 U. S. 555).

(c) The Act of May 15, 1935, c. 114, 49 Stat. 246, known as Public Law No. 60, 74th Congress (S. 1616) amended subsection (r) to read as it now stands (U. S. C. title 11, Sec. 203 (r)), with the only exception that subsequently the reference to Section 74 was eliminated through Public Law No. 423 of the 76th Congress, hereinafter listed under (g).

(d) The Act of August 28, 1935, c. 792, 49 Stat. 942, known as Public Law No. 384, 74th Congress (S. 3002) clarified Section 75 by amending subsections (b), (g), (k), (n) and (p), and rewrote subsection (s) (S. R. No. 985, 1st Sess. p. 1 *et seq.*)

(e) The Act of March 4, 1938, 52 Stat. 84, known as Public Law No. 439, 75th Congress (S. 2215) amended subsections (b) and (c) and paragraph 5 of subsection (s). (House Report No. 1833, 3d Sess.)

(f) The Act of June 22, 1938 (The Chandler Act) c. 575. 52 Stat. 840, known as Public Law No. 696, 75th Congress, 3d Session, (H. R. 8046) towards the end thereof, (52 Stat. 939) amended subsection (b) (Section 2 (b) of the Act and paragraph 2 of subsection (s)), (Section 2 (a) of the Act). Besides, Section 4 of the said Act (52 Stat. 940) repealed

Section 76 of the Bankruptcy Act, which Section 76 extended the obligation of any person secondarily liable and was applicable to proceedings under Section 75.

(g) The Act of March 4, 1940, also known as Public Law No. 423, 76th Cong., 3d Sess., c. 39 (S. 1935), referred to under paragraph (c) hereinabove, amended subsection (c) to make the relief provided by Section 75 available up to March 4, 1944 and eliminated reference to Section 74 of the Bankruptcy Act from the definition of "farmer" in Section 75 (r).

From the foregoing it appears that out of the seven amendatory acts that have dealt with Section 75 since its enactment on March 3, 1933, only two of them have dealt directly with the definition of "farmer" in Section 75 (r). Nevertheless, Section 75 has been before Congress on various other occasions, during the interval. Consequently, a study of said amendments, of the reports of the various hearings, committee reports and Congressional Record, coupled with all the information available relative to the promulgation of the Chandler Act, provides ample means to establish the true legislative intent as regards the issue to which this brief is directed. We pass on to do that now.

> "When section 75 of the Bankruptcy Act was adopted in March, 1933, subsection (r) defined a farmer as follows: 'For the purpose of this section and section 74, the term "farmer" means any individual who is personally bona fide engaged primarily in farming operations or the principal part of whose income is derived from farming operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such farming operations occur.' Act of March 3, 1933, c. 204, 47 Stat. 1467, 1470, 1473; 11 U. S. C. 203 (r)." (First National Bank and Trust Co. *v.* Beach 301 U. S. 435.)
>
> "The definition was amplified on May 15, 1935, by the

following amendment: 'For the purposes of this section, section 4 (b), and section 74, the term "farmer" includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such operations occur.' Act of May 15, 1935, c. 114, sections 3, 49 Stat. 246; 11 U. S. C. 203 (r)." (First National Bank and Trust Co. *v.* Beach 301 U. S. 435.)

As stated by this Court in *First National Bank* v. *Beach*, just cited, "The only effect of the 1935 amendments of the statute, insofar as they have to do with the definition of a farmer, was to make it clear that farming operations include dairy farming and the production of poultry and livestock products in their unmanufactured state as well as the cultivation of the products of the soil. There had been decisions to the contrary." The intention thus manifested by Congress to maintain the definition of "farmer" in Section 75 (r) unchanged, while clarifying it and at the same time making it applicable (through the amendment just cited), also to proceedings under Section 4 (b), besides showing a desire to maintain the special concept of "farmer" and promote uniformity in the decisions, we respectfully submit, also showed the intention to provide uniform relief to farmer-debtors, in either voluntary or involuntary proceedings, as set forth in detail on pages 46 and 47 of this brief.

That the intention to maintain the special concept of "farmer" evolved in the year 1933, as long as the emergency should continue, has been firm and paramount in the minds

of our legislators and that it was never intended to amend or repeal by implication Section 75 (r) through the Chandler Act, seems quite apparent from the following facts:

(a) The Committee Reports of the House and Senate, presented to Congress at the time that the Bill which resulted in the amendatory Act of May 15, 1935 was being considered (Senate Report No. 985, 74th Cong. 1st Sess., p. 4 and House Report No. 1808, same Congress and Session, p. 5) definitely show that it was the intention of Congress to clarify and affirm the existing provisions of Section 75 (r) (11 U. S. C. Sec. 203 (r)).

(b) The provisions of the last sentence of Section 75 (s) (4) as that subsection was rewritten through the amendatory Act of August 28, 1935, c. 792 (49 Stat., 942), further expanding the concept of "farmer" so as to have it apply also to partnerships, common, entirety, joint, community ownerships, or to farming corporations, under the liberal conditions specified for the latter, and in either voluntary or involuntary proceedings (subsection (c) of Section 75) have remained unaltered up to this date.

(c) The amendatory Act of March 4, 1938 (52 Stat., 84) promulgated at the time that Congress had under consideration the Chandler Act (52 Stat., 840) was eventually framed on the basis of continuing Section 75 as *emergency legislation.* (House Report No. 1833, 75th Congress, 3d Session, submitted by Mr. Chandler. Although the amendment to subsection (c) incorporated through said Act of March 4, 1938 extended the life of Section 75 up to March 4, 1940 and dealt with the filing of a petition under said section by a "farmer", the legislative history nevertheless shows that no attempt was made to alter the definition of "farmer" of Section 75 (r).

The following, extracted from the General Statement

incorporated in said Report No. 1833 submitted by Mr. Chandler (towards the middle of page 2 thereof), seems altogether significant in establishing the intention and understanding of the author of the Bill which resulted in the Chandler Act (H. R. 6439, amended, reintroduced and reported as H. R. 8046), as regards future amendments to Section 75, particularly in view of the fact that while the said Report No. 1833 was submitted by the Hon. Walter Chandler, as late as February 18, 1938, the Chandler Act had passed the House since August 10, 1937:

> "Framed and construed as emergency legislation, the House Committee on the Judiciary determined, after extensive hearings and thorough investigations, that the act, in its present form, should not be made a permanent part of the bankruptcy law; and approves S. 2215 only for the purpose of extending the statute for 2 years from March 3, 1938. During the extended term, if it appears that Section 75 *should be made permanent, appropriate changes in the law can be made.*" (Emphasis and italics supplied.)

(d) The following statements made by the Hon. Walter Chandler, extracted from the printed report of the hearings had before the Subcommittee on the Judiciary, United States Senate, Seventy-fifth Congress, Second Session on November 23, 1937, January 19, 21, 25 and February 15, 1938, seem also quite definite in showing the absence of any intention to deal with Section 75 through the Chandler Act, although said Act, as stated therein (page one of the report) had passed the House on August 10, 1937:

Page 3:

> "You will remember that in 1933 these various relief provisions were added. Those provisions related to corporate reorganizations, and were rewritten entirely and put into this new bill. So far as the original 70 sections of the Bankruptcy Act are concerned, the bill

follows the original composition, rather than writing an entirely new bill, because, after 40 years of case law on the subject, it was thought inadvisable to change the numbers of the various paragraphs and sections. As far as the original 72 sections of the act of 1898 are concerned, we took out 2 of them, which left 70, and those 70 sections were made the same as they were, so far as numbers of sections and paragraphs is concerned." (Emphasis supplied.)

Page 5:

"In addition to those original 70 sections you will remember that the former bankruptcy or moratorium act, **known as the Frazier-Lemke Act, which was known as Section 75**, was passed in 1933 or 1934. **We did not touch that section, and it is not affected by this act.**" (Emphasis supplied.)

(e) The Chandler Act itself (as stated in *Home Owners' Loan Corporation* v. *Creed*, 108 F. (2d) 153—C. C. A., 1939) "neither in its caption or body, makes any reference to the Frazier-Lemke Act, though it expressly amends, or repeals many provisions of former bankruptcy acts," until at the last moment, when the minor amendments of Section 2 (a) and (b) and the repeal of Section 76 through Section 4 (52 Stat. 939, 940) were inserted near the end.

The foregoing seems ever so much more convincing when viewed in the light that around the same time the Hon. Walter Chandler (who, besides being the author of the Chandler Bill, is generally recognized as the member of Congress who paid the most attention to bankruptcy legislation in general and to the particular Bill of December 1937 and January 1938) was sitting as Chairman of the Special Subcommittee on Bankruptcy of the Committee on the Judiciary, throughout the hearings on S. 2215 and H. R. 6452, which Bills aimed to make Section 75 permanent legislation. Said hearings resulted in the submission of Report No. 1833 by the Hon. Walter Chandler, referred to in paragraph (c) hereinabove.

(f) It was proposed in the 76th Congress—in S. 1935—to rewrite Section 75. The only permanent result was that Section 75 was merely extended for an additional four years by amending Section 75 (c) and deleting the incongruous reference to Section 74 from Section 75 (r). Nevertheless, the Reports in the Senate and in the House contain statements of interest in this discussion. Senate Report No. 1045, 76th Congress, 1st Session, submitted by Mr. McCarran from the Committee on the Judiciary, ordered to be printed on August 1, 1939, refers to S. 1935, through which it was proposed to rewrite Section 75. The following statements appear in said Report No. 1045 (submitted more than one year after the promulgation of the Chandler Act) towards the middle of page 3 thereof:

> "Subsections (g) and (h) of the bill are in place of subsections (a) to (r) inclusive, **of the present section 75.** These subsections are a great improvement over the provisions **of the present law.** They simplify the proceedings, avoid delay, and will prevent the misuse of this act by farmers who are not in need of it. There is nothing new in substance in these two sections that is not **in the present law** except that it abolishes two proceedings—one before adjudication and one after." (Emphasis supplied.)

* * * * * * *

> "Subsections (i), (j), (k), (l), and (m) of the bill are substantially the same as similar provisions in the present law. * * *"

Reference to S. 1935 referred to in said Report No. 1045 further discloses the fact that subsection (j) referred to therein as **being substantially the same as similar provisions in the present law** is a word by word repetition of

Section 75 (r) as it stood prior to the passage of the Act of March 4, 1940 (which eliminated the reference to Sec. 74) with the exceptions that the term "farmer-debtor" was used in place of "farmer," affirming the intent to broaden the class and a sentence was added towards the end to define the meanings of the words "Act" and "section." Besides, the first paragraph of subsection (k) referred to therein constitutes the last paragraph of Section 75 (s) (4), with the sole exception that the per centum of stock of a corporation which must be owned by actual farmers would have been reduced from 75 per cent, as it now stands, to 65 per cent, consonent with the liberalizing policy of Congress referred to in the Introduction to this brief.

(g) House Report No. 1658, 76th Congress, 3d Session, dated February 21, 1940, Committed to the Committee of the Whole House on the State of the Union and ordered printed, submitted by Mr. McLaughlin, from the Committee on the Judiciary to accompany S. 1935, is ever so much more edifying and complete.

The following has been extracted from said Report No. 1658, submitted on February 21, 1940—almost eighteen months after the promulgation of the Chandler Act:

Bottom of page 4:

> "CHANGES IN EXISTING LAW
>
> In compliance with paragraph 2a of rule XIII of the Rules of the House of Representatives, changes in **existing law** made by the bill are shown as follows (**existing law** proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):
>
> I. **As the bill passed the Senate** and was referred to the Committee on the Judiciary: * * *" (Emphasis supplied.)

Page 9, second paragraph from the top:

"[(r) For the purposes of this section, section 4 (b), and section 74, the term 'farmer' includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such operations occur."

Bottom of Page 11:

"[(4) * * * The provisions of this Act shall be held to apply also to partnerships, common, entirety, joint, community ownerships, or to farming corporations where at least 75 per centum of the stock is owned by actual farmers, and any such parties may join in one petition."

Middle of Page 12:

"(j) *For the purposes of this section, section 4 (b), and section 74, the term 'farmer-debtor' includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representative of a deceased farmer-debtor; and a farmer-debtor shall be deemed a resident of any county in which such operations occur. The word 'Act' wherever it occurs in this section shall mean the General Bankruptcy Act as amended, and the word 'section' means section 75 of the Act as herein amended.*

(k) *The provisions of this section shall be held to apply also to partnerships, common, entirety, joint, community ownerships, or to farming corporation where at least 65 per centum of the stock is owned by actual farmer-debtors, and any such parties may join in one petition.* * * *"

As shown by the extract from page four, the matter extracted from pages 9 and 11, shows **the existing law**, while the matter extracted from the middle of page 12, is the new matter dealing with the concept of "farmer."

Bottom of Page 12, same Report:

"II. As the bill was amended and reported by the Judiciary Committee:

SEC. 75 (c) At any time prior to March 4, [1940] 1944, a petition may be filed by any farmer, stating that the farmer is insolvent or unable to meet his debts as they mature, and that it is desirable to effect a composition or an extension of time to pay his debts. The petition or answer of the farmer shall be accompanied by his schedules. The petition and answer shall be filed with the court, but shall, on request of the farmer or creditor, be received by the conciliation commissioner for the county in which the farmer resides and promptly transmitted by him to the clerk of the court for filing. If any such petition is filed, an order of adjudication shall not be entered except as provided hereinafter in this section.

SEC. 75 (r) For the purposes of this section [,] and section 4 (b) [, and section 74,] the term 'farmer' includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations, and

includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such operations occur."

Said Bill, as amended, was later on passed by the House and Senate and resulted in the Act of March 4, 1940, referred to hereinabove and below.

(h) Said Act of March 4, 1940, also known as Public Law No. 423, 76th Cong., 3d Session, c. 39 (S. 1935) which amends subsection (c) of Section 75 **(in which the term "farmer" appears)** thus making it possible for a "farmer" to file a petition praying for relief under said Section at any time prior to March 4, 1944, simultaneously affirms the legislative intent as to the applicable definition of "farmer" in Section 75 proceedings by amending the definition of "farmer" in Section 75 (r) only to the extent of removing therefrom the confusing reference to Section 74, the provisions of which Section were eliminated from the category of emergency legislation, upon the effective date of the Chandler Act.

The Report of the Committee on the Judiciary relative to S. 1935, which resulted in the promulgation of said Act of March 4, 1940 (Report No. 1658, 76th Congress, 3d Sess.) is further cumulative towards establishing the true legislative intent which it is aimed to establish through this subtitle.

On page 4 of said Report No. 1658 of February 21, 1940, committed to the Committee of the Whole on the State of the Union and ordered to be printed, it is stated that "Section 2 (refers to said Act of March 4, 1940) is "a clarifying amendment," since "Section 74 was eliminated by the Chandler Act of 1938" and, consequently, "Reference to Section 74 (in the definition of farmer of 75 (r)) is confusing, and the committee recommends that such reference be stricken out of **the law**" (Parentheses and emphasis supplied.) The emphasized phrase **"the law"** obviously refers to Section 75 (r).

(i) As already shown, as late as June 10, 1940, Senator Nye presented to the Senate for Senator Frazier an amended copy of Senate Document No. 55 (75th Cong. 1st Sess.) entitled "Agricultural Compositions and Extensions," that is, Section 75, as it had been previously printed, but showing the amendments incorporated thereto up to that date. The Senate ordered the document "to be printed with certain changes incorporated therein." (Congressional Record of June 10 (legislative day, May 28), 1940, provisional page No. 11865, under title "Agricultural Compositions and Extensions" (S. Doc. No. 205.)

Said document, which as already stated, is Senate Document No. 205, 76th Congress, 3d Session and represents a reprint of Senate Document 55, 75th Congress, 1st Session, with the amendments up to June 10, 1940, is, we respectfully submit, categorical and definite to the effect that it is the definition of "farmer" in subsection (r) of Section 75 that applies in proceedings under said Section.

As already shown, the document specifies on its cover all the amendments incorporated up to that date to Section 75 of the Bankruptcy Act which were at the time in full force and effect, including those of the Chandler Act, listed therein as "Public 696 of the Seventy-fifth Congress." The definition of "farmer" in Section 75 (r) appears on pages 5 and 6 of the reprint with the words "and Section 74" crossed out, in order to reflect the clarifying amendment introduced thereto by the Act of March 4, 1940, discussed in paragraph (h) hereinabove. Said amendatory Act is listed on the cover of said reprint as "Public 423 of the Seventy-sixth Congress." The cover of said reprint and Section 75 (r) as they appear in said Senate Document No. 205, have been reproduced on pages 42, 43 and 44 of this brief.

We venture to comment at this point on footnote 2 appearing in the Opinion of the Circuit Court in the report

of this case below, *Benitez* v. *Bank of Nova Scotia*, 109 F. (2d), 743, 750, reading as follows:

> "2. The Report of the House Committee on the Judiciary, referred to in footnote 1, supra, contains an addendum indicating the changes in existing law made by the Chandler bill as it then read. At p. 144 of this Report there is this statement: 'SEC. 75. AGRICULTURAL COMPOSITIONS AND EXTENSIONS (No change.)' This can hardly be taken literally for, as has been pointed out, Section 75 (r) has certainly been amended to the extent that the old definition of "farmer" therein contained is no longer to be applied to Section 4 (b).
>
> 'No change' seems to refer not to the definition, but to the substantive and procedural provisions dealing with relief to distressed farmers. It may be noted further that Section 2 (a) of the Chandler Act, 52 Stat. 939, 11 U. S. C. A. Sec. 203 does specifically amend Section 75 in certain particulars not now relevant" (R., pp. 63, 64, footnote).

It is respectfully submitted that the phrase "No Change" referred to in said footnote 2 actually meant to indicate that no change had been incorporated in Section 75 by the House Committee on the Judiciary. That such is the case seems quite apparent when the situation is analyzed in the light of the following facts:

Even when the Chandler Bill (H. R. 8046) finally passed the House on August 10, 1937, the change or amendment referred to in footnote 2 cited (Section 2 (a) of the Chandler Act, 52 Stat. 939) had not been proposed. Reference to the Congressional Record showing debates and proceedings of the Senate on Friday, June 10 (legislative day Tuesday, June 7), 1938, provisional pages 11520 and 11532, Seventy-fifth Congress, Third Session, discloses that the amendment which resulted in the inclusion of said Section 2 (a) was, in fact, an amendment proposed in the Senate for the

first time to the Chandler Bill as it had passed the House.

Provisional page No. 11520 of the Congressional Record referred to above shows the adoption and inclusion of the amendment reported by the Senate Committee, which resulted in the inclusion of Section 2. Said Section 2, as shown therein, had been inserted by the Senate Committee at page 269, line 11 of the Chandler Bill as it had passed the House.

Provisional page No. 11532 shows how Senator Frazier asked and obtained unanimous consent to have the vote by which said Section 2 was agreed to, reconsidered and thereupon introduced an amendment to the committee amendment previously adopted. It was said amendment to the Committee amendment that resulted in the inclusion of Section 2 (a), as well as Section 2 (b) towards the end of the Chandler Act (52 Stat., 939).

Attention is respectfully invited to the following additional facts appearing from the Congressional Record just cited:

(a) That there is no Section 1 immediately preceding said Section 2 (a) and (b) of the Chandler Act which Section 2 follows immediately after Section 703 of Chapter XIV (Maritime Commission Liens) added in the Senate to the Chandler Bill.

(b) That once new sections 2 (a) and (b), 3 and 4 (provisional pages 11540 and 11520) had been thus added by the Senate to the Chandler Bill, said Bill was passed and sent to conference with the House.

It would therefore seem that Sections 5, 6 and 7, following said Sections 2 (a) and (b), 3 and 4 (52 Stat., 939, 940) were either added in conference or at some later date.

The following has been extracted from the House Report to which said footnote 2 in the Opinion of the Circuit Court

refers, that is, House Report No. 1409, 75th Congress, 1st Sess. (Committee on the Judiciary, July 29, 1937):

Part III, page 56:

> "In compliance with paragraph 2a of Rule XIII of the Rules of the House of Representatives, **changes in existing law** made by the bill are shown as follows:
>
> Existing law proposed to be omitted is enclosed in italics and existing law in which no change is proposed **is shown in roman.**" (Emphasis supplied.)

It seems in order to digress at this point so as to remark on the significant fact that Section 75 (r) does not appear anywhere in Chapter I, entitled "Definitions," which follows the statement just cited at page 56 et seq. of the said Report. This, we respectfully submit, further shows that it was not intended to affect the definition of "farmer" in Section 75 (r) through the other definition of farmer incorporated in Chapter I, Sec. 1 (17) of the Chandler Act. The fact that said Report No. 1409 was submitted by the Hon. Walter Chandler, makes it ever so much more significant, since this confirms Mr. Chandler's statements in the premises, hereinbefore set forth (pp. 52 and 53 of this brief).

The phrase "(No change)" placed in the last page of said Report (p. 144) after "Sec. 75, Agricultural Compositions and Extensions," we respectfully submit, may not be classed as an "addendum," as it was designated by the Circuit Court in said footnote 2 (R., p. 63).

Although in the paragraph extracted from page 56 and just transcribed above it is stated that "existing law in which no change is proposed is shown in roman," the fact is that, in addition to showing such existing law in roman, the phrase "(No Change)", exactly as it appears alongside

of Section 75, **appears also alongside of every other section of the Act of July 1, 1898 which it was not meant to amend or deal with, through the Chandler Act, irrespective of its nature of permanent or emergency legislation.** (Please refer to Section 16 on page 67, Sections 30, 33 and 36 on page 73, Section 43 on page 76, Section 54 on page 81 and Section 77 **(Railroad Reorganizations)** on page 144 of the Report after each of which sections the same phrase ("No Change") appears.

Further reference to said Report No. 1409 will show that the first 72 Sections of the Act of July 1, 1898 were incorporated therein at pages 57 to 97 inclusive. Those 72 sections were followed by the debtor relief provisions which had at the time been incorporated as permanent legislation in the Bill, i. e., chapters X, XI, XII and XIII (pages 97 to 144, inclusive). Immediately thereafter, that is, after Sec. 686 (5) of Chapter XIII the following appears:

> "Sec. 75. Agricultural Compositions and Extensions (No Change)."
>
> "Sec. 76." (Appears enclosed in black brackets to show that it was proposed to omit it, as it was omitted) (52 Stat. 940).
>
> "Sec. 77. Railroad Reorganizations (No Change)."

The foregoing, we respectfully submit, definitely shows that the remark following Section 75 just cited "(No Change)" rather than being a memorandum, confirms the statement made by Hon. Walter Chandler to the Subcommittee of the Committee on the Judiciary (United States Senate, Seventy-fifth Congress, Second Session) to the effect that **"We did not touch that Section (75) and it is not affected by this Act."** (Shandler Act.) (Page 52 of this brief.—Parentheses and emphasis supplied.)

E.

The Admissions Made by the Respondent are Definite in the Sense That It Is the Definition of "Farmer" in Section 75 (r) That Applies Also After the Effective Date of the Chandler Act.

In the brief in opposition filed herein, Respondent The Bank of Nova Scotia approaches the issue to which this brief is directed, in the following manner:

(a) That in case conflict, doubt and confusion may have been introduced through the decision of the Circuit Court as to the applicable definition of "farmer" in proceedings under Section 75 of the Bankruptcy Act **"such conflict, doubt and confusion have now been entirely eliminated by the passage of Section 2 of the Act of Congress of March 4, 1940.** (Chapter 39, Sess. Public No. 423 (S. 1935), U. S. Code Congressional Services, 1940, p. 41.)" (Brief in Opp., p. 7, first full paragraph from the top.—Emphasis supplied.)

The foregoing refers to Section 2 of the Act of March 4, 1940 discussed in paragraph (h) on page 58 of this brief, whereby reference to Section 74 was eliminated from the definition of "farmer" in Section 75 (r). We respectfully submit that such statement constitutes a definite admission on the part of the Respondent to the effect that it is the definition of Section 75 (r) that applies in proceedings initiated under the Frazier-Lemke Act. (Section 75 of the Bankruptcy Act—11 U. S. C. Sec. 203.)

(b) That "If the Chandler Act did amend Section 75 (r) insofar as inconsistent with Section 1 (17) of the Revised Act, as held by the Circuit Court below, then **the reenactment** of the old Section 75 (r) by Section 2 of the **amendatory** Act of March 4, 1940, clearly had the effect of abrogating the such amendment resulting from the Chandler

Act, of reinstating the old definition of the term 'farmer' and of making it applicable to Section 4 (b) and 75 alike" and that such "was undoubtedly the intention of Congress upon passing the Act of March 4, 1940." That "There could have been no other substantial reason or necessity for amending Section 75 (r)." That "Such amendment was not necessary *to extend until March 4, 1944, the time during which petitions may be filed by farmers under Section 75 of the Bankruptcy Act*, the avowed purpose of the Act of March 4, 1940, nor was the exclusion from Section 75 (r) of reference to 'Section 74' of importance since Section 74 had already been entirely eliminated by the Chandler Act." That while eminent counsel for the Respondent "thinks that the decision of the Circuit Court below is entirely correct" even though it be assumed that it was erroneous, "there is certainly no necessity now for a review, nor to settle a doubtful question of Federal Law of public importance, **for that has been done by the Act of Congress of March 4, 1940.**" (Brief in Opp., pp. 7 and 8—Emphasis supplied.)

From the foregoing it appears that after admitting that the definition of subsection (r) in Section 75 is the one that applies in proceedings under said Section, the Respondent went far afield with suggestions and conclusions which are not maintainable under the circumstances of this case. Through said suggestions the Respondent apparently aims to stretch the theory of repeal by implication to include also reenactment by implication—a dual conflicting theory which, we respectfully submit, may not find judicial support, particularly under the circumstances of this case. Once it is assumed that a later repugnant provision modified or abrogated a previous one, it may not be subsequently assumed that the previous one was repugnant to the later one without restoring the "*status quo ante*," thus admitting that no repugnancy did, in fact, exist.

The usual practice followed by Congress is to enact or repeal legislation through direct action and not by implication. It is possible that extraordinary circumstances may arise which might justify an inference of repeal by implication. Nevertheless, whenever such situation may actually come up and Congress may desire to correct it, such latter action would certainly be taken through the promulgation of adequate legislation—not through counter-implication. To attribute such desire to Congress, however, under the circumstances of this case, it would not only be necessary to completely ignore such usual procedure, but also the legislative history which is pertinent to the situation, as well as the avowed purpose expressly manifested upon the promulgation of the legislation concerned.

As already shown in paragraph (h) appearing on page 70 of this brief, Report No. 1658 of the House of Representatives, 76th Congress, 3d Session, February 21, 1940, Committed to the Committee of the Whole House on the state of the Union and ordered to be printed, definitely shows the true and only intent in promulgating the amendment to which Section 2 of S. 1935 was directed. The pertinent portion of the said Report, which is so clear as to admit of no other interpretation, reads as follows:

Page 4, somewhat below center of page:

> "Section (2) **is a clarifying amendment.** Section 74 of the Bankruptcy Act was eliminated by the Chandler Act of 1938, and its provisions are now included in Chapter XI of that act. **Reference to section 74 is confusing, and the committee recommends that such reference be stricken out of the law."** (Emphasis supplied.)

In citing in italics the title of the Act of March 4, 1940 (pages 7 and 8 of the Brief in Opposition) eminent counsel for the Respondent overlooked the ominous fact that Sec-

tion 75 (r) could not have been *reenacted*, as alleged in the last paragraph appearing on page 7 of the "Brief in Opposition to Petition," without referring to such reenactment in the title.

It is respectfully submitted that since the elimination of the reference to Section 74 represented only a *clarifying amendment*, it was not deemed necessary to include reference to such clarification in the amended title of the Act. That such omission was made advisedly appears from the statement incorporated at the bottom of page 1 of said House Report No. 1658, just cited, through which statement it is suggested that the title be amended to read as it subsequently appeared in said Act of March 4, 1940. Such recommendation is followed by the one extracted and transcribed above.

It is also possible that in citing in italics the title of the Act of March 4, 1940, it may have been intended to suggest that failure to incorporate reference to the clarifying amendment of Section 2 thereof in said title, renders the said amendment void. In this connection suffice it to state that we are not here concerned with the applicable definition of "farmer" in proceedings under Section 74, nor has such issue ever been injected into the proceedings to which this brief refers. The sole issue to which this brief is directed, pursuant to the instructions received through the Clerk of this Court, is as to whether in a proceeding under Section 75 of the Bankruptcy Act, the definition of the term "farmer" is to be determined by Section 75 (r) of that Act or by Section 1 (17) of the Chandler Act.

We respectfully submit that irrespective of whether the clarifying amendment incorporated in Section 75 (r) through Section (2) of the Act of March 4, 1940 is valid or void, the specific conclusions announced by the Circuit Court of Appeals, the admissions made by the Respondent, the legislative intent, ratified in the course of the promulgation

of said amendment of March 4, 1940 and the showing made through this brief in various other important aspects, all point to the same inevitable conclusion, namely, that the definition of "farmer" in subsection (r) of Section 75 is the one that applies in proceedings under said Section, since the promulgation of the Act of May 15, 1935, 49 Stat. 246, said definition not having been amended, repealed by implication or in any other manner, way or form, affected by the Chandler Act, or through any other Act, other than through the clarifying amendment of Section 2 of the Act of March 4, 1940 referred to above.

Conclusions.

It is respectfully submitted that on the strength of the showing made through this brief, the decree of affirmance complained of should be reversed, with costs, and the cause remanded directly to the District Court.

The decision of the Circuit Court of Appeals pertaining to the sole question to which brief and argument was limited by this Court, namely, whether in a proceeding under Section 75 of the Bankruptcy Act, the definition of the term "farmer" is to be determined by the definition of subsection (r) of said Section 75 (11 U. S. C. 203) (r) or by the definition of Chapter I, Section 1 (17) of the Chandler Act, (52 Stat. 840) was based exclusively on the theory of amendment or repeal *by implication*. (Please refer to paragraphs (h) and (i) appearing on pages 35 and 36 of this brief.) Such being the case, when the situation is viewed in retrospect, and, in particular, in the light of events which took place after the decision complained of was rendered, it seems inevitable to conclude that Congress has definitely manifested its legislative intent in that respect, in a manner which is diametrically opposed to the one attributed to it by the Circuit Court. We refer principally to the matter incorporated under sub-titles C and D, appearing

on page 32 et seq. and page 47 et seq., respectively, in this brief.

In view of the limitation referred to at the beginning of the paragraph immediately preceding, we could not enter into the discussion of other questions raised through the petition for writ of certiorari filed herein. We, therefore, respectfully submit that said issue as to the applicable definition of "farmer" having been raised in the Circuit Court of Appeals by the Respondent, as shown in part I of the Preliminary Considerations, appearing on page 10 et seq. of this brief and the District Court having evidently decided the issue under the same premise (please refer to part II of the Preliminary Considerations, appearing on page 12 et seq. of this brief) we believe that petitioner herein is entitled to have the cause remanded directly to the District Court, with directions to reinstate your petitioner's farmer debtor proceedings and to set aside, vacate and hold for naught all proceedings of the nature of the ones listed in subsections (o) and (p) of Section 75, (11 U. S. C., Sects. 203 (o) and (p) instituted or maintained against your petitioner or her property after the filing of her petition under said Section and up to this date—an issue which was seasonably raised by your petitioner in this Court, as well as in the Circuit Court of Appeals and in the District Court.

Reference to the second paragraph of that portion of the opinion pertaining to appeal No. 3487 before the Circuit Court, (R., p. 59) which is the appeal to which this brief refers, will show that the Circuit Court dwelt upon the issue of the mandatory and self-executing stay raised by petitioner herein, stating that your petitioner's farmer-debtor petition was filed *"one hour before the foreclosure sale."* That is precisely the sale which resulted in the foreclosure of the collateral security involved and served as a basis for the foreclosure proceedings subsequently instituted and

which eventually deprived petitioner herein of all her property and assets, under conditions which this Court has since decided to render such proceedings null and void and contrary to law. (*Kalb* v. *Feuerstein*, 308 U. S. 443.)

In addition to the foregoing careful consideration of the said opinion will disclose that the Circuit Court decided various other questions presented, and in connection with some of which the issue as to the applicable definition of "farmer" was either immaterial or else was not involved at all. Amongst the questions thus decided **and, besides, reversed,** was that pertaining to the issue of technical lack of good faith (R., p. 60, last full paragraph) which reversal went on the ground of the decision previously rendered by this Court in the Bartels case. (*John Hancock Mutual Life Insurance Company* v. *Benno Bartels*—308 U. S. 180.) We respectfully submit that on the strength of that prejudicial error thus reversed and the facts set forth in this brief, the decree appealed from should have been reversed by the Circuit Court of Appeals.

We respectfully pray this Court to reverse the decision and decree of the United States Circuit Court of Appeals for the First Circuit holding that your petitioner did not qualify as a "farmer" pursuant to statute and that the cause be remanded directly from this Court to the District Court of the United States for Puerto Rico, directing said District Court to reinstate your petitioner's farmer-debtor proceedings and to set aside, vacate and hold for naught all proceedings of the nature listed in subsections (o) and (p) of Section 75 of the Bankruptcy Act, instituted or maintained against your petitioner or her property, in violation of the mandatory, self-executing provisions of said subsections (o) and (p), after the filing of her petition under said Section 75, together with any other and further relief which to this Court may seem equitable in the prem-

ises, with costs in this Court, in said Circuit Court of Appeals and in said District Court.

Respectfully submitted,

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As of Counsel.

Ponce, Puerto Rico, March 15, 1941.

(3300)